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CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT

BY AND AMONG

SIMON PROPERTY GROUP, L.P.,

DILLARD DEPARTMENT STORES, INC.,

THE MAY DEPARTMENT STORES COMPANY,

998 MONROE CORPORATION,

J.C. PENNEY PROPERTIES, INC.

AND

MERVYN'S

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
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CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT

THIS CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT (the "REA"), made and entered into as of the 29th day of December, 1995, by and among SIMON PROPERTY GROUP, L.P., a Delaware limited partnership (d/b/a Simon Real Estate Group Limited Partnership) ("Developer"), DILLARD DEPARTMENT STORES, INC., a Delaware corporation ("Dillard"), THE MAY DEPARTMENT STORES COMPANY, a New York corporation ("May"), 998 MONROE CORPORATION, a Delaware corporation ("Ward"), J.C. PENNEY PROPERTIES, INC., a Delaware corporation ("Penney") and MERVYN'S, a California corporation ("Mervyn's") qualified to do business in New Mexico as Mervyn's Inc.

W I T N E S S E T H:

WHEREAS, Developer is the owner of certain tracts of land in Bernalillo County, New Mexico, which tracts of land are described in Part I of Exhibit A attached hereto and by this reference made a part hereof, and shown upon the plot plan attached hereto as Exhibit B, and by this reference made a part hereof, said tracts of land being hereinafter referred to collectively as the "Developer Tract"; and

WHEREAS, Dillard is the owner of a certain tract of land located in Bernalillo County, New Mexico, described in Part II of Exhibit A, and shown on Exhibit B, said tract of land being hereinafter collectively referred to as the "Dillard Tract"; and

WHEREAS, May is the owner of a certain tract of land located in Bernalillo County, New Mexico, described in Part III of Exhibit A, and shown on Exhibit B, said tract of land being hereinafter referred to as the "May Tract"; and

WHEREAS, Ward is the owner of a certain tract of land located in Bernalillo County, New Mexico, described in Part IV of Exhibit A, and shown on Exhibit B, said tracts of land being hereinafter collectively referred to as the "Ward Tract"; and

WHEREAS, Penney is the owner of a certain tract of land located in Bernalillo County, New Mexico, described in Part V of

Exhibit A, and shown on Exhibit B, said tract of land being hereinafter referred to as the "Penney Tract"; and

WHEREAS, Mervyn's is the owner of a certain tract of land located in Bernalillo County, New Mexico, described in Part VI of Exhibit A, and shown on Exhibit B, said tract of land being hereinafter referred to as the "Mervyn's Tract"; and

WHEREAS, the Parties hereto desire to make an integrated use of the tracts of land owned by each and to develop and improve the premises designated respectively as the Developer Tract, the Dillard Tract, the May Tract, the Ward Tract, the Penney Tract and the Mervyn's Tract (said tracts being hereinafter collectively referred to as the "Shopping Center Site") as a regional shopping center, hereinafter referred to as the "Shopping Center"; and

WHEREAS, Dillard desires to construct or cause to be constructed and thereafter to Operate (as hereinafter defined), or cause to be Operated, as a part of the Shopping Center, a retail facility, as hereinafter provided, in the Dillard Store to be located on the Dillard Store Site as shown on Exhibit B; and

WHEREAS, May desires to construct or cause to be constructed and thereafter to Operate, or cause to be Operated, as a part of the Shopping Center, a retail facility, as hereinafter provided, in the May Store to be located on the May Store Site as shown on Exhibit B; and

WHEREAS, Ward desires to construct or cause to be constructed and thereafter Operate, or cause to be Operated, as a part of the Shopping Center, a retail facility, as hereinafter provided, in the Ward Store to be located on the Ward Store Site as shown on Exhibit B and a tire, battery and automotive facility to be located on the Ward Tract as shown on Exhibit B (the "Ward TBA"); and

WHEREAS, Penney desires to construct or cause to be constructed and thereafter to Operate, or cause to be Operated, as part of the Shopping Center, a retail facility, as hereinafter provided, in the Penney Store to be located on the Penney Store Site as shown on Exhibit B; and

WHEREAS, Mervyn's desires to construct or cause to be constructed and thereafter to Operate, or cause to be Operated, as part of the Shopping Center, a retail facility, as hereinafter provided, in the Mervyn's Store to be located on the Mervyn's Store Site as shown on Exhibit B; and

WHEREAS, Developer desires to construct or cause to be constructed and thereafter to Operate, or cause to be Operated, as a part of the Shopping Center, one or more buildings as hereinafter provided, for retail and related occupancies in Developer Mall Stores, and to construct and Operate the Enclosed Mall on the Developer Tract as shown on Exhibit B; and

WHEREAS, Developer desires to construct or cause to be constructed, as specifically set forth in Section 6.1, the Common Improvement Work (excluding the SAD Work); and

WHEREAS, Developer desires to construct or cause or permit to be constructed retail and/or commercial facilities on the Reserve Tracts; and

WHEREAS, Developer, Dillard, May, Ward, Penney and Mervyn's each desire to grant to and exchange with the other Parties (as hereafter defined) certain reciprocal easements in, to, over and across their respective Tracts within the Shopping Center Site; and

WHEREAS, the Parties desire to make certain mutual provisions for the construction, maintenance and Operation of the Common Area and other buildings and improvements upon the Shopping Center Site, and to make certain other covenants and agreements as hereinafter more specifically set forth.

NOW, THEREFORE, in consideration of the foregoing, and the covenants and agreements on the part of each Party to the others, as hereinafter set forth, IT IS AGREED, as follows:

ARTICLE 1

DEFINITIONS

As used in this REA, the following terms shall have the following respective meanings:

Section 1.1 Access Roads. The term "Access Roads" shall mean those portions of the Shopping Center Site and the Ring Road, which provide access, ingress and egress between the Shopping Center Site, the various Tracts contained within the Shopping Center Site and the public roads and highways, all as are shown and identified as such on Exhibit B.

Section 1.2 Accounting Period. The term "Accounting Period" shall mean each period commencing January 1 and ending on the next following December 31 during the Term of this REA, except that the first Accounting Period shall commence as to each Party, respectively, on a date thirty (30) days prior to the earlier to occur of (A) the day it first opens its Store for business to the general public, or (B) the date it is required, pursuant to Article 7 of this REA as to each Major, and pursuant to Article 5 of this REA as to Developer, first to open its Store for business to the general public, and shall end on and include the next following December 31. Any portion or portions of the Exterior Common Area Maintenance Cost relating to a period of time, only part of which is included within the first Accounting Period or the last Accounting Period of a Party, shall be prorated on a daily basis as respects such Party.

Section 1.3 Allocable Share; Allocable Share Agreement. The term "Allocable Share" shall mean, with respect to a Major, that amount or part of Exterior Common Area Maintenance Cost and Enclosed Mall Operation and Maintenance Expense, or other cost allocable to and payable by such Major as reimbursement to Developer for, and as such Major's contribution to, Exterior Common Area Maintenance Cost and Enclosed Mall Operation and Maintenance Expense or other costs or expenses, as is set forth in a separate unrecorded agreement between Developer and each Major relating thereto and containing other agreements ("Allocable Share Agreement"). In the event of a conflict between the obligations of a Major as set forth in this REA and as set forth in such Allocable Share Agreement, as between the Developer and such Major, the provisions of the Allocable Share Agreement shall control. The

provisions of each Major's Allocable Share Agreement are incorporated into this REA by reference as between the Developer and each Major as if set forth in full.

Section 1.4 Automobile Parking Area. The term "Automobile Parking Area" shall mean those portions of the Common Area to be available from time to time for the passage of pedestrians and for the passage and parking of motor and other vehicles, including bicycles, together with all improvements which at any time are erected thereon, including the incidental and interior roadways, pedestrian stairways, walkways, bicycle paths, light standards, directional signs, Access Roads, driveways, curbs and landscaping within or adjacent to areas used for parking of motor vehicles.

Section 1.5 Common Area. The term "Common Area" shall mean (A) all areas within the exterior boundaries of the Shopping Center Site which are made available, as hereinafter provided, for the general non-exclusive use, convenience and benefit of all Permittees, (B) employee parking areas, if any, located upon land outside the Shopping Center Site which may from time to time be provided with the prior written approval of the Parties and (C) the Retention Ponds (as defined in Section 2.15).

Such Common Area shall include, but not be limited to, Common Utility Lines, Automobile Parking Area, Perimeter Sidewalks, Retention Ponds, other sidewalks, berms, retaining walls, curbs adjoining berms and retaining walls separating upper and lower Automobile Parking Areas, malls including the Enclosed Mall, landscaping irrigation systems which are not required to be maintained by the Majors, landscaped buffer strips, rest rooms not located within space exclusively appropriated by any Occupant, and in addition, a Common Area maintenance office and equipment storage area, if such office and storage area are used exclusively for such purposes and do not exceed in the aggregate 5,000 square feet of floor area. All of such facilities in excess of said 5,000 square feet or not utilized exclusively for such permitted purposes shall not be Common Area but shall be Floor Area. Common Area includes those portions of Store Sites which are improved and intended to be

used as Common Area until such time as any construction is commenced or about to be commenced.

Common Area shall not include the Shopping Center management office nor the Store Sites of the Majors.

Section 1.6 Common Improvement Work. The term "Common Improvement Work" shall mean the work to be done by Developer and SAD 223 (as hereinafter defined) as described and provided in Article 6 of this REA.

Section 1.7 Common Utility Lines. The term "Common Utility Lines" shall mean any of the following installed under the provisions of this REA as to the Common Improvement Work: utility systems or facilities for the service of the Common Area or for use in common by more than one of the Parties or their respective Permittees, including sewer systems (including, without limitation, underground storm and public or private sanitary sewer systems and the Retention Ponds), manholes, surface water drainage systems, underground domestic water systems, underground natural gas systems (if gas is available), underground electrical systems, underground fire protection water systems, underground telephone systems and underground cable television and telecommunications systems, and any replacements thereof.

Section 1.8 Court. The term "Court" shall mean those certain areas within the Enclosed Mall, on each level thereof, abutting the Store of each respective Major as shown and designated on Exhibit B as the "Dillard Court", "May Court", "Ward Court", "Penney Court" and "Mervyn's Court".

Section 1.9 Developer Improvements. The term "Developer Improvements" shall mean Developer Mall Stores and the Enclosed Mall as the same may exist from time to time, including any replacements thereof, but not including any Major's Store.

Section 1.10 Developer Mall Stores. The term "Developer Mall Stores" shall mean that portion of the Developer Improvements, exclusive of Common Areas, designated as "Shops" on Exhibit B and located on the Developer Tract, as such improvements may exist from

time to time, including any replacements thereof, but not including any Major's Store.

Section 1.11 Developer, Dillard, May, Ward, Penney and Mervyn's. The terms "Developer", "Dillard", "May", "Ward", "Penney" and "Mervyn's", respectively, shall mean Simon Property Group, L.P., Dillard Department Stores, Inc., The May Department Stores Company, 998 Monroe Corporation, J.C. Penney Properties, Inc., Mervyn's and their respective successors and assigns to their interests as Party in their respective Tracts, subject to the terms of Section 28.13 hereof.

Section 1.12 Intentionally Omitted

Section 1.13 Enclosed Mall. The term "Enclosed Mall" shall mean that portion of the Common Area which is within the two level, enclosed, sprinklered, lighted, heated, ventilated and air conditioned building, together with all improvements therein and appurtenances thereto (including public restrooms and emergency exit corridors or stairs) which is or is to be constructed in the Shopping Center, which is designated as Enclosed Mall on Exhibit B, as such building may exist from time to time, including any replacements thereof.

Section 1.14 Enclosed Mall Operation and Maintenance Expense. The term "Enclosed Mall Operation and Maintenance Expense" shall mean the total of all monies paid and expenses incurred by Developer during an Accounting Period in connection with the Enclosed Mall (excluding the Shopping Center management office which shall be maintained by Developer at its sole cost and expense) for all maintenance, Operation, repair and management thereof, including, but not limited to, amounts for the following: utility expenses for lighting, operation of air conditioning and heating equipment; costs of acquisition, rental and replacement of maintenance equipment; personal property taxes and assessments on maintenance equipment; real property taxes and assessments (including but not limited to those on Common Area restrooms, emergency exit corridors, stairs, elevators and escalators within the Developer Improvements); premiums on public liability, property

damage, fire and extended coverage, vandalism and plate glass insurance for the Enclosed Mall improvements and equipment; costs of policing, security protection, control and regulation of the Enclosed Mall; maintenance, repair and replacement of mechanical equipment, including automatic door openers, except automatic doors opening to the Stores, lighting fixtures (including replacement of tubes, bulbs and ballasts), air conditioning and heating equipment, domestic water distribution and delivery systems, fire sprinkler system, elevators and escalators; maintenance of landscaping and plants within the Enclosed Mall; repair, maintenance, sweeping and cleaning of the Enclosed Mall, including ceiling, roof, skylights, windows, floors and floor covering, and artifacts, and all other items of expense which are incurred for the maintenance, repair, management and Operation of the Enclosed Mall, plus an allowance to Developer for Developer's supervision of the Enclosed Mall. Developer may cause any or all services to be provided by an independent contractor or contractors. Developer shall maintain accounting records in a manner that will reflect the Enclosed Mall Operation and Maintenance Expense separate from all other costs and expenses. Nothing in this Agreement shall prevent an entity related to or connected with Developer from receiving a management fee based upon receipts from Occupants or reimbursement of expenses which represent the Shopping Center's allocation of expenses under a cost sharing agreement for services and personnel necessary in connection with the management and leasing of the Shopping Center.

Section 1.15 Exterior Common Area Maintenance Cost. The term "Exterior Common Area Maintenance Cost" shall mean the total of all monies paid and expenses incurred by Developer during an Accounting Period for costs and expenses relating to the maintenance, repair and Operation of the exterior Common Area, in fulfilling Developer's obligations under Article 10.

Such Exterior Common Area Maintenance Cost shall further include, but not be limited to, amounts for the following: rental charges for maintenance equipment and cost of small tools and supplies; acquisition costs of maintenance equipment (including

reasonable financing charges [excluding late charges]); policing, security protection, traffic direction, control and regulation of Automobile Parking Area; cost of cleaning and removal of rubbish, ice, snow, dirt and debris from the exterior Common Area; the cost of landscape maintenance and supplies for the exterior Common Area; costs of maintaining the Common Utility Lines; charges for utilities services utilized in connection with operating and maintaining the exterior Common Area (except for such charges to be separately metered and charged to less than all Parties) together with costs of maintaining and replacing lighting fixtures in the Automobile Parking Area; premiums for insurance required to be carried by Developer under the provisions of Section 11.3 and 12.1, and premiums for property insurance covering the exterior Common Area equipment; personal property taxes on exterior Common Area equipment and on capital improvements and replacements.

In lieu of any other charge for indirect costs (including but not limited to the cost of the operation of any office, accounting services and other services not directly involved with maintenance and Operation), Exterior Common Area Maintenance Cost shall include an allowance to Developer for Developer's supervision of the Common Area equal to fifteen percent (15%) of the total of the aforementioned cost and expense of work performed by Developer, or under its direct supervision, for each Accounting Period.

Nothing in Section 1.14 or this Section 1.15 shall be deemed to preclude any additional or different charges being made pursuant to any lease or other agreement between Developer and any Occupant.

Section 1.16 Floor Area.

A. The term "Floor Area" shall mean the aggregate from time to time of the actual number of square feet of floor space of all floors in any structure located on the Shopping Center Site, whether or not actually occupied, including basement space and subterranean areas, balcony and mezzanine space, and space covered by interior walls and columns; measured from the exterior faces or the exterior lines of the exterior walls (including basement walls), except party and interior common walls, as to which the

center thereof instead of the exterior faces thereof shall be used.

B. The term "Floor Area" shall not include any of the following:

(1) The upper levels of any multi-deck stock areas created for convenience to increase the usability of space for stock purposes;

(2) Areas whether physically separated or whether otherwise required by building codes, which are used primarily to house mechanical, electrical (including electronic computer rooms housing equipment to operate point of sale equipment and management information systems), telephone, telecommunications, computer and HVAC equipment and other such building operating equipment; including trash compacting and baling areas (whether or not physically separated);

(3) Any Common Area;

(4) Any (a) Shopping Center management office, (b) Merchants' Association offices, and/or (c) public auditorium, community rooms or meeting room(s) not exclusively serving any one Occupant and/or (d) areas set aside for janitorial or maintenance offices or for similar purposes or for the storage of equipment relating to such purposes, to the extent that the sum of (4)(a), (b), (c) and (d) does not exceed an aggregate of five thousand (5,000) square feet;

(5) Emergency exit corridors or stairs between fire resistant walls required by building codes;

(6) All truck loading areas, truck tunnels and truck docks and parking, turn-around and dock areas, trash compacting and baling facilities (whether or not physically separated or situated within a building or enclosure) and ramps and approaches thereto; and

(7) Kiosks and merchandise carts which have been located and constructed and are operating, all in accordance with Section 8.7 of this REA.

Section 1.17 Including. Notwithstanding anything else contained in this document, for the purposes of this REA, the term

"including" shall mean "including without limitation" unless expressly provided otherwise.

Section 1.18 Indemnify. The term "Indemnify" (and its various forms, e.g. "Indemnity" and "Indemnification") shall mean the obligation of a Party ("Indemnitor") to indemnify, defend (with counsel reasonably acceptable to the Party receiving such indemnity), protect and hold harmless another Party and its officers, directors, partners, agents, servants and employees (collectively "Indemnitee"), from and against all losses, claims, liabilities, actions, damages, manners of action, costs,expenses, fines, fees, judgments and amounts, whether foreseen or unforeseen (including, without limitation, reasonable attorney's fees, professional fees and other costs of litigation) suffered, sustained or incurred by them, arising out of, related to, caused by or resulting from the matter which is the subject of the indemnity claim by a Person based upon the death of or injury to any Person or the physical or economic damage to or loss of any property of any Person arising out of the acts or omissions of the Indemnitor, its agents, servants or employees. Indemnitee agrees to give the Indemnitor timely notice of any suit or proceeding entitling the Indemnitee to indemnification hereunder. However, if timely notice is not given, the Indemnitor shall be excused from its obligation to Indemnify only to the extent that the Indemnitor is prejudiced thereby. No Party shall be obligated to Indemnify another Party to the extent the claim or loss underlying the Indemnitee's request for indemnity (a) was caused or contributed by the negligence or intentional wrongdoing of the Indemnitee, (b) was caused by the willful, intentional or wanton act or omission of the Indemnitee, or (c) has been released and waived in accordance with the provisions of Section 12.4.

Section 1.19 Initial Planned Floor Area. The term "Initial Planned Floor Area" shall mean the Floor Area which each Party has designated it will construct on its Tract, as provided in Section 8.1 hereof.

Section 1.20 Majors. The term "Major" or "Majors" shall mean the Party as to the May Tract, Dillard Tract, Ward Tract, Penney Tract and Mervyn's Tract, severally or collectively, as may be appropriate.

Section 1.21 Mortgage and Mortgagee. The term "Mortgage" shall mean an indenture of first mortgage or a first deed of trust on a Tract, or a lease or sublease in a Sale and Leaseback. The term "Mortgagee" shall mean either (A) the mortgagee under a Mortgage, (B) the trustee and beneficiary under a deed of trust, or (C) the fee owner, lessor or sublessor following a Sale and Leaseback. The term "Mortgagee" shall not refer to any of the foregoing Persons in possession of the Tract of any Party.

Section 1.22 Occupant. The term "Occupant" shall mean the Developer, the Majors, and any Person from time to time entitled to the use and occupancy of Floor Area on the Shopping Center Site under any lease, deed or other instrument or arrangement.

Section 1.23 Operate, Operating, Operation. The terms "Operate", or "Operating", or "Operation" shall mean: (A) as respects any Store, the Store is open to the general public for business during its business hours or is temporarily not so open for business by reason of any provision of Section 8.8 or Article 15 or during any period of restoration or reconstruction of any Store pursuant to the provisions of Articles 13 or 16, or by reason of such reasonable interruptions, not to exceed ninety (90) days in any twelve (12) month period, as may be incidental to the conduct of its business; (B) as respects the Enclosed Mall, that the Enclosed Mall is open to the general public in accordance with the provisions of Section 20.1 J hereof, and is being maintained in accordance with Article 10 hereof, subject to interruptions during any period of restoration or reconstruction of that part of the Enclosed Mall which has been damaged or destroyed and is being restored or reconstructed pursuant to the provisions of Articles 13 or 16, and (C) as respects all other Common Area, that the Common Area is available for the uses contemplated herein, subject to interruptions contemplated by Section 8.8 and Articles 13 and 16 or

elsewhere in this Agreement and is being maintained in accordance with the requirements of Article 10. For purposes of the term "Operate" as used in Sections 20.1 and 21.1 only, the phrase "temporarily not so open for business by reason of any provision of Article 15" as used in this Section shall mean a period of time of no more than twelve (12) consecutive months.

Section 1.24 Party. The term "Party" shall mean each of Simon Property Group, L.P.; Dillard Department Stores, Inc.; The May Department Stores Company; 998 Monroe Corporation; J.C. Penney Properties, Inc.; Mervyn's; and any successor Person acquiring any interest in or to any portion of the Shopping Center Site or interest in the owner of any portion of the Shopping Center Site, by transfer, conveyance, merger, or as otherwise provided in this REA, subject to, and except as is otherwise provided in, subparagraphs A, B, C and D of this Section 1.24. Ward agrees that the obligations of Ward under this REA shall be guaranteed by Montgomery Ward & Co., Incorporated. Penney agrees that the obligations of Penney under this REA shall be guaranteed by J.C. Penney Company, Inc.

The exceptions to a successor becoming a Party by reason of any transfer, conveyance, merger, or as otherwise provided in this REA, of the whole or any part of the interest of any Party in and to such Party's Tract are as follows:

A. While and so long as the transferring Party retains the entire possessory interest in the Tract or in any portion thereof so conveyed by the terms of a Mortgage, in which event the Person owning such possessory interest, and not the Mortgagee, shall have the status of Party.

B. The transfer or conveyance is a Sale and Leaseback in which event only the lessee, or sublessee, as the case may be, entitled to possession of the Tract shall have the status of Party, so long as the lease or sublease in question has not expired or been terminated.

C. The transfer or conveyance is by way of lease or sublease, other than as provided in B above, in which event the transferor or conveyor shall have the status of a Party.

D. The successor acquires by such transfer or conveyance:

(1) An interest in less than all of a Party's Tract; or

(2) Less than the entire interest of a Party in a Tract, such as that of joint tenancy, tenancy in common, or a life estate; or

(3) An undivided interest, legal or equitable, in the assets of any Party, which interest is not also an interest in the Party's Tract.

In the circumstances described in this Subparagraph D, the Persons holding each of the interests in such Tract are to be jointly considered a single Party. In order that other Parties shall not be required with respect to said Tract to give notice to or to obtain the action or agreement of, or to proceed against, more than one individual or entity for each Tract in carrying out or enforcing the terms, covenants, provisions and conditions of this REA, then, in the circumstances described in Subparagraph D(1) above, the Persons holding the interest of the Party in and to not less than seventy percent (70%) of said Tract in question shall designate one of their number as such Party's agent (hereinafter called "Party's Agent") to act on behalf of all Persons holding any interest in such Tract, and, in the circumstances described in Subparagraph D(2) above, the holders of the interests totaling not less than seventy percent (70%) of the entire estate in and to said Tract in question shall designate one of their number as such Party's Agent to act on behalf of all Persons holding an interest in such Tract. If any Tract is owned by Persons owning an undivided interest therein under any form of joint or common ownership, then, in the determination of such seventy percent (70%) in interest, each such owner of such undivided interest shall be deemed to represent a percentage in interest of the

whole of such ownership equal to its fractional interest in such Tract. In the case of life tenancies established for one or more life tenants and one or more remaindermen, only the interests of the life tenants shall, for purposes of this Section 1.24, be deemed to represent an interest in the Tract and their determination hereunder shall be final and binding on the remaindermen (and, if created by way of trust, on such trust, trustor, trustee and trust beneficiaries). In the circumstances described in Subparagraph D(3), to-wit: if any Tract or Tracts, or portion or portions thereof, is or are owned by any form of entity or entities and the interests of the Persons owning such entity or entities are not interests in the Tract or portion or portions thereof (for example, the interest of a beneficiary under a trust), the Person owning each such interest shall nevertheless be deemed to represent a percentage interest of the whole ownership of the Tract, or portion or portions thereof, as the case may be, which percentage shall be equal to the fractional interest of such Person in the entity or entities and the holders of interests totalling not less than seventy percent (70%) of the entire interest in and to such Tract shall designate one of their number to act as such Party's Agent on behalf of all persons holding an interest in such Tract. The foregoing requirements to designate one individual to act on behalf of all Persons owning an interest in the assets of a Party shall not apply to stockholders and bondholders of a corporate Party if the signatures of not more than two (2) officers thereof to any document are sufficient to commit said Party to the terms of such document. In any of the circumstances described in this Subparagraph D, any interest owned by any Person who is a minor or is otherwise suffering under any legal disability shall be disregarded in the making of such designation unless there is at such time a duly appointed guardian or other legal representative fully empowered to act on behalf of such Person.

In the absence of such written designation, the acts of the Person who was the Party prior to the transfer or conveyance (whether or not such Person retains any interest in the Tract in question) shall be binding upon all Persons having an interest or right in said Tract in question, until such time as written notice of such designation is given and recorded in the office of the County Recorder of the County and State in which said Tract is located, and a copy thereof is served (as provided for notices under Section 25.1) upon each of the other Parties, by registered or certified mail, except as set forth below; provided, however, in the following instances all of the other Parties, acting jointly, or in the failure of such joint action, any other Party at any time may make such designation of another Party's Agent:

(a) If at any time after any designation of a Party's Agent, in accordance with the provisions of this Subparagraph D, there shall be for any reason no duly designated Party's Agent of whose appointment all other Parties have been notified as herein provided; or

(b) If a Party's Agent has not been so designated and such notice has not been given thirty (30) days after any other Party shall become aware of any change in the ownership of any portion of the Shopping Center or change in the structure of any Party; or

(c) If the designation of such Party's Agent earlier than the expiration of such thirty (30) day period shall be reasonably necessary to enable any other Party to comply with any of its obligations under this REA or to take any other action which may be necessary to carry out the purposes of this REA.

The exercise of any powers and rights of a Party under this REA by such Party's Agent shall be binding and irrevocable upon all Persons having an interest or right in

the Party's Tract and upon all Persons having an interest in the Party in question, to the same extent as if such exercise had been performed by each of such Persons jointly on behalf of the Party. The other Parties shall have the right to deal with and rely solely upon the acts and omissions of such Party's Agent to the same extent as if it were the Party in question; but such designation shall not relieve any Person from the obligations created by this REA.

Any Person designated a Party's Agent pursuant to the provisions of this Subparagraph D shall be the agent of his principals, upon whom service of any process, writ, summons, order or other mandate of any nature of any court in any action, suit or proceeding arising out of this REA may be made, and service upon such Party's Agent shall constitute due and proper service of any such matter upon his principals. Until a successor Party's Agent has been appointed and notice of such appointment has been given pursuant to the provisions of this Subparagraph D, the designation of a Party's Agent shall remain valid and binding and irrevocable upon each Person having an interest in the Tract of such Party.

Upon any transfer, conveyance or reversion of title or interest which transfer, conveyance or reversion of title or interest would create a new Party, pursuant to the terms hereof, then the powers, rights and interest herein conferred upon the Party with respect to the Tract so transferred, conveyed, or reverted shall be deemed assigned, transferred, conveyed, or reverted to such transferee, grantee, or the holder of the reversionary title or interest, and the obligations herein conferred upon the Party shall be deemed assumed by such transferee, grantee, or the holder of the reversionary title or interest, with respect to the Tract so acquired from and after the date of such transfer, conveyance or reversion of title or interest.

For purposes of the provisions of this subparagraph D, a partnership (whether general or limited), which acquires either an

interest in a Parcel under subparagraphs D (1) or D (2) above or an interest in the assets of a Party under subparagraph D (3) above, shall be considered a single entity or Person, without regard to any tenancy in partnership or other similar undivided interest created in the Parcel or Party by virtue of the partnership relationship. In addition, the other Parties shall have the right to rely on the acts of any general partner of any such partnership as binding on the partnership in accordance with applicable law, in the exercise by such partnership of its rights and obligations under this subparagraph D or as a Party to this REA, or a member of a Party to this REA. If any such partnership has more than one general partner, the partnership shall designate one general partner to act on behalf of all partners of the partnership.

Anything in this Section 1.24 or any other Section of this REA to the contrary notwithstanding, it is expressly agreed that so long as J.C. Penney Company, Inc., a Delaware corporation, is in actual occupancy of the Penney Tract, or is a lessee of the Penney Tract under a lease or sublease agreement with J.C. Penney Properties, Inc. or any other Person, notwithstanding the fact that J.C. Penney Properties, Inc., or any other Person shall be the owner of such Tract, such owner shall not be a Party, but J.C. Penney Company, Inc. shall, for all purposes of this REA, be considered a Party and the term "Penney" shall be deemed to mean J.C. Penney Company, Inc. So long as J. C. Penney Company, Inc. is a Party pursuant to this paragraph, all acts, omissions, waivers, consents, and approvals of, and any amendment or modification of this REA by J.C. Penney Company, Inc. shall bind and be conclusive on J.C. Penney Properties, Inc. and its successors and assigns.

Section 1.25 Perimeter Sidewalks. The term "Perimeter Sidewalks" shall mean those areas on a Party's Tract adjacent to the Party's Store between exterior building faces and interior curb faces, including sidewalks, landscaping and all other improvements (exclusive of Common Utility Lines) which shall be designed and constructed by each Party on its Tract at its expense, as hereinafter provided; provided, however, retaining walls or berms,

and sidewalks and curbs adjoining them, separating upper and lower level Automobile Parking Areas shall not be considered Perimeter Sidewalks.

Section 1.26 Permittees. The term "Permittees" shall mean all Occupants and their respective officers, directors, partners, employees, agents, contractors, subcontractors, customers, visitors, invitees, tenants, subtenants, licensees and concessionaires.

Section 1.27 Person. The word "Person" shall mean all individuals, partnerships, firms, associations, trusts and corporations, and any other form of business or government entity, and the use of the singular shall include the plural.

Section 1.28 Project Architect. The term "Project Architect" shall mean Law/Kingdon, Inc., or such other architect or architects duly licensed to practice architecture in the State of New Mexico, as may from time to time be designated by Developer and approved by the Majors for the design development of the Shopping Center.

Section 1.29 Ring Road. The term "Ring Road" means that certain road located on the Shopping Center Site which encircles the Shopping Center and which is so designated and shown on Exhibit B.

Section 1.30 Sale and Leaseback. A "Sale and Leaseback" shall mean a transaction whereby a Party who as the fee or leasehold owner of its Tract and/or its Store conveys the entire fee or assigns or subleases the leasehold estate in such Tract and/or Store, and such conveyance or assignment or sublease is followed immediately by a leaseback or subleaseback of the Tract and/or Store either to such Party or to its affiliate, or to the guarantor of such Party's covenants, agreements and obligations under this REA.

Section 1.31 "SAD Work". Off-Site and On-Site Improvements to be done by SAD 223.

Section 1.32 "SAD 223". The Albuquerque, New Mexico Special Assessment District No. 223 as created by the City Council of the

City of Albuquerque (the "City"), Ninth Council, Council Bill No. R-287, Enactment No. 23-1991, passed and adopted on February 4, 1991 and approved on February 15, 1991.

Section 1.33 Scheduled Opening Date. The term "Scheduled Opening Date" shall mean July 31, 1996 as to Developer and all Majors, except Penney, and shall mean November 6, 1996 as to Penney.

Section 1.34 Separate Utility Lines. The term "Separate Utility Lines" shall mean any of the following not installed under the provisions of this REA as to the Common Improvement Work which are not within the definition of Common Utility Lines: utility facilities to service any Store situated on any Tract, including underground sewer systems (including, without limitation, underground storm and public or private sanitary sewer systems), underground domestic water systems, underground natural gas systems (if gas is available), underground electrical systems, underground fire protection water systems, underground telephone systems, underground electronic data interchange systems and underground cable television systems, if any.

Section 1.35 "Sole Discretion". Notwithstanding anything else contained in this document, for the purposes of this REA, the term "sole discretion" shall mean "sole and absolute discretion" unless expressly provided otherwise.

Section 1.36 Store or Stores. The term "Store" shall mean the building(s) (including the Ward TBA identified as such on the Plot Plan) (exclusive of the Enclosed Mall identified as such on the Plot Plan), respectively to be located on the Dillard Tract, the May Tract, the Ward Tract, the Penney Tract, the Mervyn's Tract and the Developer Tract, as such buildings may exist from time to time, including any replacement thereof; and the term "Stores" shall mean all or any combination of the foregoing, as the context may appropriately require, which shall include loading docks and truck facilities, except where specifically otherwise provided. The Developer Mall Stores shall include the kiosks and pushcarts located in the areas shown on Exhibit B and designated "Kiosk

Areas" and "Cart Areas" and those otherwise permitted in accordance with Section 8.7.

Section 1.37 Store Site or Sites. The term "Store Site" shall mean each area so designated on Exhibit B within the Shopping Center Site upon which a Store, if constructed, shall be constructed as herein provided, including any designated expansion areas, and the term "Store Sites" shall mean all or any combination of said areas.

Section 1.38 Technical Specifications. The term "Technical Specifications" shall mean the particular requirements, if any, attached to the Allocable Share Agreement of each Party for the initial construction of certain improvements on the Shopping Center Site, including, but not limited to, On-Site and Off-Site Improvements (excluding SAD Work). Developer represents that the Technical Specifications of the individual Majors are not incompatible with one another.

Section 1.39 Term. The term "Term" shall mean the period of sixty-five (65) years commencing on the date hereof, unless sooner terminated as provided in this REA.

Section 1.40 Termination Date. The term "Termination Date" shall mean the date on which this REA shall terminate pursuant to the terms and provisions of this REA.

Section 1.41 Tract or Tracts. The term "Tract" or "Tracts" shall mean the Developer Tract and/or the Dillard Tract and/or the May Tract and/or the Ward Tract and/or the Penney Tract and/or the Mervyn's Tract, as the context may require.

ARTICLE 2

EASEMENTS

Section 2.1 Definitions and Documentation. This Article 2 sets forth the easements and the terms and conditions thereof, which the respective Parties hereby grant to each other, for the respective periods set forth with respect to each such easement. For the purposes of this Article 2 the following will apply:

(A) A Party granting an easement is called the "Grantor", it being intended that the grant shall thereby bind and include not only such Party but also its successors and assigns.

(B) A Party to whom the easement is granted is called the "Grantee". The Grantee may permit and designate, from time to time, its Permittees to use such easement, provided that no such permission shall authorize a use of the easement in excess of the use intended at the date of the grant of such easement.

(C) The word "in" with respect to an easement granted "in" a particular Tract means, as the context may require, "in", "to", "on", "over", "through", "upon", "across" and "under", or any one or more of the foregoing.

(D) The grant of an easement by a Grantor shall bind and burden its Tract which shall, for the purpose of this REA, be deemed to be the servient tenement. Where only a portion of the Tract is bound and burdened by the easement, only that bound and burdened portion shall be deemed to be the servient tenement.

(E) The grant of an easement to a Grantee shall benefit and bind such Grantee's Tract which shall, for the purpose of this REA, be deemed to be the dominant tenement. Where only a portion of the Tract is so benefitted, only that benefitted portion shall be deemed to be the dominant tenement.

(F) Unless expressly provided otherwise, all easements granted herein are non-exclusive and irrevocable for the duration of such easement grants as herein set forth.

(G) All easements granted hereunder shall exist by virtue of this REA, and where expressly provided shall continue if the REA is terminated, without the necessity of confirmation by any other document. Likewise, upon the termination of any easement (in whole or in part) or its release in respect of all or any part of any Tract, the same shall be deemed to have been terminated or released without the necessity of confirmation by any other document. However, upon the request of any Grantor, each affected Grantee will sign and acknowledge a document memorializing the existence (including the location and any conditions), or the termination (in

whole or in part), or the release (in whole or in part), as the case may be, of any easement, if the form and substance of the document are approved by such Party.

(H) All easements granted herein shall be easements appurtenant and not easements in gross.

(I) No grant of easement pursuant to this Article 2 shall impose any greater obligation on any Party to construct or maintain its Store except as expressly provided in this REA.

Section 2.2 Non-exclusive Easements for Automobile Parking and Incidental Uses. Each Party hereby grants to each of the other Parties, easements over the Common Area of the Grantor's Tract, for ingress to and egress from the Grantee's Tract, for the passage and parking of vehicles, for passage and accommodation of pedestrians, and for doing such things as are authorized or required to be done on said Common Area pursuant to the terms of this REA, on such respective portions of such Common Area as are from time to time set aside, maintained and authorized for such use pursuant to the terms of this REA. Ward shall have the right to number no more than fifty (50) parking spaces on the Ward TBA Parcel in the location shown on Exhibit B, and such numbering shall not violate the provisions hereof; provided, however, that such numbering shall be only for purposes of convenience of identification of parking spaces for the Ward TBA while operating as such and shall not be deemed an appropriation of any such parking spaces to such Party's or any Person's exclusive use.

Each Party hereby reserves the right to eject or cause the ejection from the Common Area of its Tract of any Person not authorized, empowered or privileged under this REA to use the Common Area of such Tract. Notwithstanding the foregoing, each Party reserves the right to close the exterior Common Area of its Tract for such reasonable period or periods of time as may be legally necessary in the reasonable opinion of its attorney to prevent the acquisition of prescriptive rights by anyone; provided, however, that prior to closing any portion of the exterior Common Area, as herein provided, such Party shall give written notice to

each other Party of its intention so to do, and shall coordinate such closing with all other Parties so that such closing shall cause no unreasonable interference with the Operation of the Shopping Center.

Notwithstanding any other provision of this REA, the foregoing easements granted and covenants given under this Section 2.2 shall terminate and expire on the Termination Date, except as otherwise provided in this REA.

Section 2.3 Utilities. Each Party hereby grants to each of the other Parties, respectively, easements in the Common Area of its Tract (other than any Store Site and the Enclosed Mall) for the installation, operation, flow and passage, use, maintenance, repair, replacement, relocation and removal of Separate Utility Lines and Common Utility Lines (collectively the "Utility Lines"). All Utility Lines (whether or not installed pursuant to the easements granted herein) shall be underground. The location of all easements granted by the Parties in this Section 2.3 other than those existing on the date hereof shall be subject to the prior written approval of the Party in whose Tract the same are to be located. No Utility Lines may be located (i) as to May, within ten (10) feet, and (ii) as to the other Parties, within five (5) feet, of any Store Sites or expansion areas shown on Exhibit B.

Subject to Article 6 of this REA, the Grantee of any of the Separate Utility Line easements shall be responsible as between the Grantor and the Grantee thereof for the installation, maintenance and repair at Grantee's cost of all such Separate Utility Lines installed pursuant to such grant. Any such installation, maintenance and repair shall be performed only after two (2) weeks notice to the Grantor of the Grantee's intention to do such work accompanied by a description of such work and after consultation with and approval of the Grantor as to the timing of such work (except in the case of an emergency, where any such work may be immediately performed after such advance notice to Grantor as is practicable under the circumstances), and any such work shall be done without cost or expense to the Grantor, only during a time

approved by Grantor, and in such manner as to cause as little disturbance to Grantor and in the use of the Common Area as may be practicable under the circumstances. The Grantor shall not unreasonably withhold its approval to such work and the timing thereof. All portions of the surface area of Grantor's Tract which may have been excavated, damaged or otherwise disturbed as a result of such work shall be promptly restored at the sole cost and expense of Grantee to essentially the same condition as the same were in prior to the commencement of any such work. The Grantee shall Indemnify Grantor in connection with Grantee's exercise of the Separate Utility Line easements under this Section, except to the extent of Grantor's sole negligence or willful act or omission. None of such work or restoration of the Grantor's Tract, except emergency repair work, shall be initiated or carried on during the period from November 20 of any year through January 15 of the immediately succeeding year or during the two (2) weeks prior to Easter and any work and/or restoration theretofore in progress shall be prosecuted to completion prior to the above periods.

At any time, the Grantor of any of the utility easements granted pursuant to this Section 2.3 shall have the right to relocate on the Tract of the Grantor any such Utility Lines then located on the Tract of the Grantor provided that such relocation shall be performed only after thirty (30) days' notice of the Grantor's intention to so relocate shall have been given to all Grantees (or to only those Grantees affected in the case of relocation of a Separate Utility Line), and such relocation: (A) shall not interfere with or diminish the utility services to such Grantees (however, temporary interferences with and diminutions in utility services shall be permitted if they are scheduled to occur and occur during nonbusiness hours of such Grantees and during such hours as such Grantees may approve in their reasonable discretion and Grantor promptly reimburses Grantees for all cost, expense and loss incurred by such Grantees as a result of such interferences and/or diminutions), (B) shall not reduce or unreasonably impair the usefulness or function of such Utility Lines, (C) shall be

performed without cost or expense to such Grantees, and (D) shall be underground. Notwithstanding such relocation, maintenance of such Utility Lines shall be, subject to Sections 10.2 and 13.1, the obligation of the Grantee; provided that, if there shall be any material increase in the cost of such maintenance on account of the relocation, the Grantor shall bear such excess. No such relocation work shall be initiated or carried on during the period from November 20 of any year through January 15 of the immediately succeeding year or during the two (2) weeks prior to Easter and any work and/or restoration theretofore in progress shall be prosecuted to completion prior to the above periods.

Subject to Section 2.11, both the Common Utility Line easements and the Separate Utility Line easements granted by this Section 2.3 shall be perpetual, and shall survive the Termination Date.

From and after the Termination Date, there shall be no addition, expansion or relocation by Grantee of any Utility Lines on the Grantor's Tract, and the obligations for maintenance, repair, reconstruction and replacement (and for the cost of any such items) of the utility easements and the Utility Lines therein shall be governed by common and statutory laws applicable to such easements; provided, however, that all other provisions of this Section 2.3 (including the Indemnity provisions) shall not be affected and shall continue in full force and effect for so long as any such easements shall remain in effect.

Section 2.4 Construction and Encroachment Licenses and Easements. Each Party with respect to the Common Area on its Tract hereby grants to each other Party a temporary license for ingress and egress to and from the Common Area of each such Tract for the purpose of construction on the Grantee's Tract pursuant to the provisions of Articles 5, 6, 7, 13 and 16 hereof, subject to Section 9.3, which license shall continue only for so long as such construction is being performed by or on behalf of the Grantee with due diligence. Each Party with respect to the Common Area on its Tract hereby grants to the Party of the adjoining Tracts easements

in the Common Area and, where appropriate as hereinafter set forth, in its Store Site, for the (A) use and maintenance in each such Tract of: (1) separate or common footings, foundations and supports to a maximum lateral distance of six feet (6') for the purpose of supporting building improvements of Grantee and party walls, (2) attachments to a Party's wall, but only if the attachment is designed in accordance with good construction practice in the manner customary for improvements of such type and so as not to impose any load on Grantor's building improvements unless otherwise approved by Grantor and Grantee in the working drawings for such improvements, and (3) canopies, roof and building overhangs, roof flashings, wing walls, awnings, alarm bells, signs, lights and lighting devices and other similar appurtenances but, as to all the foregoing, only if attached to the building of the Grantee and only to a maximum lateral distance of fourteen feet (14') and (4) electrical or similar vaults, emergency generators and HVAC supply-exhaust shafts below the surface of such Common Area, to a maximum lateral distance of fourteen feet (14'); as any of the foregoing items in (1) through (4) above are shown in the working drawings for such building, which drawings shall be submitted to Grantor at least thirty (30) days before commencement of construction, and specifically approved in writing by the Grantor separately from the provisions of Article 4 hereof, which approval shall not be unreasonably withheld or delayed except as to items (1) and (2) above wherein approval shall be in the sole discretion of the Grantor; (B) construction pursuant to the provisions of Articles 5, 6, 7 and 8; and (C) restoration thereof pursuant to Articles 13 and 16. The foregoing shall not obligate any Grantor to perform any construction or to spend any additional sums of money other than as is required of such Party under Articles 5, 6, 7 and 8. Upon completion of the construction elements referred to in (A) (1) through (4) above in accordance with the approved working drawings, and upon the request of any Party, the Parties shall join in the execution of an agreement, in recordable form, appropriately identifying the nature and location of each such construction

element, and the location of the easements granted in this Section 2.4, which shall not thereafter be changed without the written approval of Grantor. Each Party covenants and agrees, respectively, that its exercise of such easements shall not result in damage or injury to the buildings or other improvements of any other Party, and shall not interfere with or interrupt the business operations conducted by any other Party in the Shopping Center. Common footings, if any, shall be compatible with the design of the building to be erected by the Grantor. If common footings are agreed to by the applicable parties, in their sole discretion, the first such Party prepared to construct footings for its building shall, upon request, be furnished by the other Party with all required live load and dead load requirements, column locations, anchor conditions and beam locations, if applicable, as well as any other information reasonably required by the Party first constructing in order to cast same in the common footings at the time of concrete placement. The cost of constructing the common footings shall be allocated between the Parties based on the weight each Party's building will place on such common footings. Each Grantee agrees to pay the Grantor any additional cost, if any, of construction, maintenance, repair and replacement of any common footings, foundations and retaining walls, or any other structure constructed by Grantor, which arises on account of Grantee's exercise of its easement rights under this Section 2.4. Each Grantee further agrees to use due care in the exercise of the rights granted in this Section and, in the event the exercise of the rights granted under this Section requires Grantee to enter upon the Tract of Grantor, first to obtain the consent of Grantor as to the methods and timing in the exercise of such rights. In addition, each Grantee, at its expense, shall promptly repair, replace or restore any and all improvements of Grantor which have been damaged or destroyed by Grantee in the exercise of the easements granted under this Section and shall Indemnify Grantor in connection with Grantee's exercise of its rights pursuant to said easements, except to the extent of the Grantor's sole negligence,

willful act or omission. Grantee's improvements constructed in the exercise of such easements shall, for purposes of maintenance, Operation, insurance, taxes, repairs, reconstruction and restoration under this REA, be deemed part of the Grantee's Tract and Store and shall be deemed not a part of the Grantor's Tract or Store for such purposes.

The easements granted by Subsections (A) and (C) of this Section 2.4 shall not terminate (notwithstanding the occurrence of the Termination Date) as long as the Grantee's Store is in existence, or is in the process of being restored (provided that such restoration has commenced within twelve (12) months from the date of destruction and is diligently pursued to completion). The easements granted by Subsection (B) of this Section 2.4 shall terminate on the Termination Date.

Section 2.5 Redesignation of Areas Within Store Sites. Subject to the provisions of Sections 8.1, 8.2, 8.8, 10.3, 20.1 and 21.1, the Parties shall each have the right, as to their respective Tracts, in their respective Store Sites, at any time and from time to time, to designate, withdraw and redesignate as Floor Area or Common Area such areas, excluding fire exit or service corridors which serve another Party, as each may, respectively, from time to time select, provided that (A) each Party shall improve said area at its expense in accordance with such designation and with all applicable requirements of this REA, and (B) during the period a Major is required to Operate, a building facade of the Store of such Major shall, subject to the provisions of Section 2.6 and Article 13 hereof, always be located so as (1) to provide a main building entrance open to each level of the Enclosed Mall, as required herein, and (2) to complete the enclosure of the Enclosed Mall and provide functional legal access from and after the date of completion of construction of the Enclosed Mall and such Major's Store for so long thereafter as said Enclosed Mall is required to be maintained as such.

Section 2.6 Easements for Maintaining Common Foundations. The Grantor of an easement under clauses (1) and (2) of Section

2.4A covenants to Grantee that if all or any part of Grantor's Store is removed or destroyed at a time when Grantor is not required to restore the same under this REA, Grantor will leave in place any foundations, party walls and load bearing walls (or portions thereof) and supporting structures not destroyed if, immediately before such removal or destruction, such foundations or party walls or load bearing walls (or portions thereof) were shared jointly between such Grantor and Grantee. Grantor shall be obligated to leave such foundations, party walls and load bearing walls and supporting structures in place only for so long as that portion of the Store of the Grantee or of the Enclosed Mall sharing such common foundations, party walls or load bearing walls (as originally constructed or as replaced under this REA) shall stand or shall be in the process of being replaced and such items shall thereafter be maintained and repaired by Grantee.

Nothing in this Section 2.6 nor in Section 2.4 hereof shall (A) impose any obligation on any Grantor to restore or reconstruct or (B) prohibit any Grantor from demolishing all or any part of its Store or the Enclosed Mall after the termination of such restoration obligations as are otherwise contained in this REA.

The covenants and easements given under this Section 2.6 shall not terminate (notwithstanding the occurrence of the Termination Date) as long as the Grantee's Store or Enclosed Mall, as the case may be, is in existence or is in the process of being restored (provided that such restoration has commenced within twelve (12) months from the date of destruction and is diligently pursued to completion).

Section 2.7 Easements for Access Roads. Each Party, as Grantor, hereby grants to each of the other Parties easements for pedestrian and vehicular traffic within those portions of the Access Roads on Grantor's Tract as shown on Exhibit B.

The easements for such Access Roads are granted by the Grantors for the purpose of providing (i) ingress and egress between a Grantee's Tract and Corrales Road, Coors By-Pass Road and

Seven-Bar Loop Road respectively, and (ii) vehicular circulation around the Shopping Center Site.

The grant of easements for the use of the Access Roads includes the following rights and is subject to the following restrictions and reservations:

(1) The use of the Access Roads easements by any Person entitled under this REA to use thereof shall be nonexclusive and in common with any other such Persons; such easements and the land upon which they are located shall be considered in all respects part of the Common Area.

(2) The Grantors of the Access Roads easements agree not to obstruct or interfere in any way with the free flow of pedestrian and vehicular traffic over the roadways which comprise the Access Roads, except to the extent necessary for reasonable repair and maintenance, traffic regulation and control, and to prevent a dedication thereof or the accrual of any rights to the public therein; all such repair and maintenance, except in an emergency situation, and such prevention of dedication, shall take place at a time and in a manner so as to minimize interruption of business on the Shopping Center Site.

(3) Grantors reserve the right from time to time after (but not before) the Termination Date to change the location of all or part of an Access Road on their respective Tracts; provided however, that access and use for pedestrian and vehicular traffic is not unreasonably restricted or its enjoyment in any way impaired by such changes. Such relocation shall be made at the sole cost and expense of Grantor and shall be subject to all local rules, laws and regulations which may be applicable to the relocation of such Access Road. The quality of construction and the width of the relocated Access Road shall be substantially similar to the portion being relocated immediately prior to such relocation. A Grantor desiring to so relocate any such Access Road shall construct, prior to discontinuing usage of the Access Road, at its own expense, a new roadway in a new location which is in all respects at least equal to the roadway in the old location, and shall record in

Bernalillo County, New Mexico, a certificate setting forth the legal description of such new roadway as it exists upon such Grantor's Tract for purposes of imposing perpetual easements for roadways that are created by this Section 2.7 on the strips of land comprising the relocated roadways and such recorded certificate shall comply in all respects with all applicable local laws, rules and regulations which may be applicable to the relocation of such Access Road. The relocation shall be carried out in such manner as to cause the least possible interference with the use of the Access Road, and Grantor shall provide thirty (30) days' notice to the other Parties describing the areas of the Access Road to be relocated.

After the termination of this REA, any Party may elect not to use any Access Road by providing notice of such election to all other Parties and such Party shall thereafter have no further obligations regarding said roads. After the termination of this REA, the obligations for maintenance, taxes, repair, reconstruction and replacement (and for the cost of such items) of the Access Roads and the obligations for any related Indemnities shall be agreed upon by the Parties utilizing such Access Roads or any portion thereof, but the failure of such Parties to reach such agreement shall not impair any of such Parties' perpetual easement rights relative to such Access Roads. At the request of any Party to this REA, the Parties shall execute a written agreement more particularly identifying and describing the aforesaid Access Road easement area by metes and bounds. From and after the Termination Date, the obligations for maintenance, repair, reconstruction and replacement (and for the cost of any such items) of the Access Roads also shall be governed by applicable common and statutory laws; provided, however, that all other provisions of this Section 2.7 shall continue in full force and effect.

The easements granted by this Section 2.7 shall be perpetual and survive the termination of this REA unless abandoned as set forth herein.

Section 2.8 Exterior and Accent Light Easements. Developer hereby grants to each Major, and each Major hereby grants to Developer, an easement to install, maintain, repair and replace, at the individual expense (including electricity) of the Grantee, lights for the purpose of highlighting the exterior of the Grantee's Store (including the portion of the Store adjacent to the interior of the Enclosed Mall), lights which illuminate a face of a building fronting an exterior Common Area to be placed on light standards being installed pursuant to the provisions of Article 4 hereof within that portion of the Common Area on Grantor's Tract contiguous to the Grantee's Tract and within fifty feet (50') from the face of the Grantee's Store [or fifteen feet (15') for any portion of the Store adjacent to the interior of the Enclosed Mall] or at such other locations as agreed upon by Grantor and Grantee; and lights within the Enclosed Mall to be affixed to the building (the exact illumination standards to be used to be agreed to by Grantor and Grantee), together with an easement of ingress to and egress from light standards to accomplish such purpose. The position, type and character of such lights shall be subject to the approval of Grantor. Each Grantee agrees to use due care in the exercise of the rights granted under this Section 2.8, and shall obtain Grantor's prior consent as to the methods and timing in the exercise of such rights, and further agrees, at Grantee's expense, promptly to repair, replace and restore any and all improvements of Grantor which have been damaged or destroyed by Grantee in the exercise of the rights granted under this Section to the condition existing prior to such damage or destruction and to Indemnify Grantor in connection with the exercise of such rights.

The easements granted under this Section 2.8 shall terminate on the Termination Date.

Section 2.9 Fire and Service Corridor Easements. Developer hereby grants to the Majors such easements over the Developer Tract as are required by building codes to provide emergency fire exit corridors and/or stairs in the locations shown on Exhibit B attached hereto, leading from Store(s) of certain Majors to exits

to the Automobile Parking Area or such other location in the Common Area as is required by applicable codes. The easements granted under this Section 2.9 shall terminate as to a Major in the event the Developer Improvements and such Major's Store are both damaged or destroyed, the Developer commences the restoration of such Developer Improvements in accordance with Section 13.3, and the Major does not commence and pursue to completion the restoration of its Store in accordance with Section 13.4.

Section 2.10 Sign Easements for Majors. Developer hereby grants to each of the Majors an easement upon the exterior facade of Developer Mall Stores in the locations shown on Exhibit B, for the purpose of each Major erecting, constructing, using and maintaining signs identifying each Major's trade name, together with an easement for necessary power lines from each Major's Store to such signs. The easements granted by this Section 2.10 are exclusive and shall remain in existence for each Major so long as the Store of such Major and the Developer Mall Stores shall be in existence in the Shopping Center (including any period of reconstruction pursuant to Article 13), but not beyond the Termination Date.

Section 2.11 Abandonment of Easements. The perpetual easements granted in Section 2.3 hereof or any Utility Line constructed in the exercise thereof may (A) be abandoned by Grantee at any time by notice to Grantor or (B) be terminated by Grantor after the Termination Date of this REA, if the use thereof or of facilities therein shall have ceased for a period of two (2) years and prior to the resumption of use (1) the then record owner of the fee of the Tract burdened with such easement gives written notice by U.S. registered or certified mail, return receipt requested, to the then record owner of the fee of the Tract benefitted by such easement and to the then record owner, if any, of any leasehold estate in such benefitted Tract, stating that such easement has been abandoned, (2) there is placed of record in the Office of the Recorder of Bernalillo County, New Mexico, an affidavit that such abandonment has taken place and that such notice has been properly

given, and (3) any record owner of the fee of, and the then record owner of any leasehold estate in, the benefitted Tract within ninety (90) days after such notice fails to place of record in the Office of the Recorder of Bernalillo County, New Mexico, an affidavit that such easement has been used within such two (2) year period. Any Person at any time acquiring an interest in any Tract after the first such affidavit or notice described above has been placed of record shall (provided such affidavit and recording shall have been made after the Termination Date as provided above) be entitled to rely absolutely upon the failure of the Person receiving the first such notice to have placed of record an affidavit of use within such ninety (90) day period as being conclusive evidence that such easement has been abandoned and terminated.

Section 2.12 Prohibition Against Granting Easements. Except as provided in Section 2.3 herein and in that certain Agreement Regarding Restriction of Reserve Tracts recorded prior to this REA, no Party hereafter shall grant or otherwise convey an easement or easements in its Tract of the type set forth in this Article 2 for the benefit of any property not within the Shopping Center Site, except that Developer shall have the right to dedicate any or all of the Access Roads (except the Ring Road) as public streets and rights-of-way, if the same have not heretofore been dedicated and, if required, the Majors shall join in such dedication. Such dedication shall be free of the burden of this REA provided Developer enters into an agreement which provides for the proper maintenance of said dedicated Access Roads to the standards set forth in Section 10.2 and provides that if the municipality fails to properly maintain said Access Roads, Developer retains the right and shall have the obligation to maintain the Access Roads to the standards set forth in Section 10.2.

Section 2.13 Correction of Site Descriptions. It is recognized that, by reason of errors, the Developer Improvements and the Stores of the Majors may not be precisely constructed within their respective Tracts and Store Sites as described in

Exhibit A and shown on Exhibit B. In the event the building or buildings of any Party has not been precisely constructed within its respective Store Site and/or Tract, then, subject to Section 2.14 below, promptly upon the request of any Party all of the Parties will join in the execution of an agreement, in recordable form, amending Exhibit A and Exhibit B to this REA, so as to revise the description of such Tract and the adjoining Tract to coincide with the as-built perimeter of the buildings and improvements constructed by the owner of such Tract and to include in the adjoining Tract an amount of land equivalent to that which has been taken by the encroachment. Nothing herein contained shall be deemed to relieve or excuse any Party from exercising all due diligence to construct its Floor Area, Common Area and other improvements within its Store Site and Tract as described on Exhibit A and as shown on Exhibit B.

Section 2.14 Conveyance of Title or Grant of Easements. Upon request of any Party whose Tract description is being revised pursuant to Section 2.13, each Party upon whose Tract the encroachment occurred agrees either to (A) grant an easement over that portion of its property as is required to correct such descriptions for so long as such encroachment exists or is being restored, or (B) convey satisfactory title to the encroaching Party in order to accomplish the Tract description revision as contemplated by Section 2.13, in event of which conveyance the encroaching Party shall deed to the Party whose Tract was encroached upon an equivalent amount of acreage contiguous to the Tract which was encroached upon.

Section 2.15 Easement for Surface Water Drainage. Each Party with respect to its Tract hereby grants to all other Parties and for the benefit of all Tracts within the Shopping Center Site easements over, upon, under and across the Common Area located on each Tract within the Shopping Center Site for the purpose of causing the existing surface water flow to be diverted and directed from a particular Tract across other Tracts, and discharging all existing or future surface water flow from such Tract or Tracts

onto, over, upon, under and across such other Tracts, and, to the extent applicable, into the retention ponds ("Retention Ponds"), designated and located as shown on Exhibit B. Developer shall cause all surface water to be diverted and directed to the Retention Ponds through an underground storm water system designed and constructed so as to prevent any discharge or release or any erosion, backup, accumulation or pooling of surface water on the Tract of any Major.

Developer agrees (A) not to improve or use the Retention Ponds for any other purpose without the consent of the Majors, (B) to perform all obligations under the aforesaid easement that are binding upon all or any part of the Shopping Center Site, (C) to enforce all rights under the aforesaid easement that inure to the benefit of all or any part of the Shopping Center Site, (D) to maintain or cause to be maintained the Retention Ponds in accordance with the requirements of the City of Albuquerque, New Mexico, and in such a way as to prevent the pooling of water on the Tract of any Major, and (E) not to amend the aforesaid easement without the consent of the Majors.

ARTICLE 3

TERMINATION OF REA

This REA shall terminate, except for the easements for the Access Roads provided in Section 2.7 and the easements provided in Sections 2.3 and 2.6 and any other provisions of this REA which by their terms shall survive such date, on the earliest to occur of: (A) the date which is sixty-five (65) years from the date hereof, or (B) the date on which all the Parties mutually agree, unless sooner terminated under the provisions of Article 16 (herein referred to as the "Term" of this REA).

ARTICLE 4

IMPROVEMENT PLANS

Section 4.1 Scope of Plans. In the preparation of all improvement plans for the Shopping Center (excluding SAD Work), the plan requirements, the general design data, standards and minimum physical specifications set forth on and the provisions and requirements of approved Technical Specifications shall in all respects be followed, unless prohibited by applicable government requirements or applicable government requirements establish higher standards. Developer shall prepare or shall cause the Project Architect to prepare plans and specifications (hereinafter "Design Development Improvement Plans") for the Developer Improvements which cover both the Enclosed Mall and the Developer Mall Stores and do not include Common Improvement Work (hereinafter defined), and for the general architectural concept of the Shopping Center, including the integrated development of the Shopping Center in accordance with this REA. Upon completion of the Design Development Improvement Plans, Developer shall, within fifteen (15) days, cause the same to be submitted to the Parties for review and approval. Upon completion of the preparation of Developer Working Drawings (as defined in Section 4.4), Developer shall submit or shall cause the Project Architect to submit such Developer Working Drawings to the Parties in reproducible form (in sepias or reproducible transparencies) for review and approval. The Developer Working Drawings shall be noted as to what changes have been made from the Design Development Improvement Plans and shall contain all revision dates. The Developer Working Drawings shall be developed from the Design Development Improvement Plans described in Section 4.2 hereof. Each document submitted for approval shall comply with Section 28.6C.

Section 4.2 Design Development Improvement Plans. Not later than sixty (60) days prior to commencement of construction by Developer, Developer shall, at its expense, deliver to each of the Majors two (2) sets of specifications and one (1) complete set of sepias of such Design Development Improvement Plans (which term

includes specifications [excluding SAD Work] for the review and approval of the Majors, which approval or disapproval shall be made within sixty (60) days of the receipt thereof by the Majors). Developer shall deliver additional sets of such specifications as may be reasonably requested by a Major. All such Design Development Improvement Plans shall conform to Exhibit B to this REA and otherwise be in accordance with the requirements of this REA and include, with respect to the portion of the Developer Improvements (which do not include Common Improvements) to be constructed, without limitation:

(A) Design and location plans of all Perimeter Sidewalks along the perimeter of the Developer Improvements and all truck loading areas and truck parking, turn-around and dock areas and ramps.

(B) Architectural elevations of the Developer Improvements.

(C) Exterior elevations reflecting design concepts of the Developer Improvements.

(D) Interior design of the Enclosed Mall (such plans to include architectural elevations and renderings, sections and floor plans).

(E) Design and location plans for all forms of vertical transportation, seating arrangements, directories, all fixed improvements in the Enclosed Mall and all accessible design features as required by applicable federal, state and local laws and codes.

(F) Landscaping plans for the Developer Improvements showing location and species for all exterior and interior landscaping, together with illustrations of all such species.

(G) Proposed specifications, including, without limitation, materials and colors, for the exterior of the Developer Improvements and the interior and amenities for the Enclosed Mall.

(H) Layout of all tenant space in the Developer Mall Stores (but not the individual tenant units).

Section 4.3 Enclosed Mall Improvement Plans.

A. The Enclosed Mall Improvement Plans (which are a portion of the Design Development Improvement Plans) shall include the following:

Plans and specifications for attachment of the Enclosed Mall and Developer Mall Stores to the Store of each Major, and the Project Architect preparing the same shall consider: the facade of the building to which the attachment is to be made; the sheathing of any columns in the Enclosed Mall adjacent to any such building facade; the sign requirements of the Majors at the Enclosed Mall entrances of their respective Stores, including the sight line visibility of such signs of the Majors; the insurance requirements of each Major so as to maintain the quality of its usual fire and extended coverage insurance without increased premium; building code requirements; increased or decreased cost of construction of the structure to which the attachment is to be made; and the fact that there shall be no loading or structural stress imposed upon any Major's Store. In the event plans and specifications for such attachment are submitted and approved by any Major in sufficient time to enable it to design its Store so as to receive such attachment, such Major shall so design its Store and shall coordinate its improvement plans with Developer so that the walls of the Stores may be constructed to permit attachment of the Enclosed Mall and/or Developer Mall Stores thereto in accordance with such improvement plans. Developer shall attach the Enclosed Mall to the Majors' Stores without any obligation by Developer to pay the Majors any amount for the right so to attach the Enclosed Mall and without any obligation by any Major to contribute to the payment of the cost of constructing, attaching and equipping the Enclosed Mall to such Major's Store. Developer shall furnish, install and maintain the flashing and seal at said attachment and shall repair, at its sole cost and its sole expense, any damage to the Majors' Store caused by Developer making or maintaining said attachment. Each Major will provide a reglet on its exterior wall adjoining the Enclosed Mall and/or abutting the Developer Mall Stores and Developer will counterflash each Major's Store at

Developer's sole cost and expense. Developer shall provide an expansion joint and the tie-in for the wall and floor connections between each Major's Store and the Developer Improvements. In the event the plans and specifications for connecting the Major's Store to the Developer Improvements are not submitted prior to completion of the plans for the Major's Store, but are thereafter approved, then the expense of any change in revising the Store plans and any additional cost in constructing such Store shall be borne by Developer. Each Major shall then have the right to approve, in its sole and absolute judgment, such plans and specifications for attachment with respect to its Store.

B. In the preparation of all Enclosed Mall Improvement Plans the following general design data shall be followed, as minimums, unless prohibited by governmental specifications or governmental specifications for such work establish higher standards:

(1) The surface of that portion of the Enclosed Mall devoted to pedestrian traffic shall be in a continuous plane without steps. The maximum slope in such surface shall not exceed one-half percent (1/2%), unless otherwise shown on the approved Enclosed Mall Improvement Plans.

(2) All fire protective systems shall be installed in accordance with the requirements of local codes and governmental authorities having jurisdiction over such installation, and any additional requirements of any insurance carrier or qualified, independent inspection firm representing any Party with respect to its improvements as they relate to the Enclosed Mall and/or abutting the Developer Mall Stores. The Enclosed Mall (a) shall provide for sprinkler protection [including, if required by building code requirements or a Major's independent inspection firm or insurance carrier, a fire protection water curtain (but not a deluge system)] within the ceiling plane of the Enclosed Mall and at all windows and doors of the Store of any Major which face or open onto the Enclosed Mall, with sprinkler heads at six feet (6') on center, spaced as required by code or by the foregoing

inspection firm or insurance requirements, (b) shall include a smoke control system as required by building code requirements; provided, however, that a request for any additional smoke vents or smoke alarms which a Major may elect must be made by the Major requiring same in a timely manner, to enable such requirement to be included in the Developer Working Drawings and if such additional smoke vents or smoke alarms are required for any reason other than the attachment of a Major's Store to the Enclosed Mall or the proximity of the Developer Improvements, such Major shall reimburse to Developer the costs of installing such smoke vents and smoke alarms; each Major shall have the right to approve in its reasonable judgment such plans and specifications in connection with such additional smoke vents and smoke alarms; and (c) shall include a smoke detection system, including an automatic smoke evacuation system as required by building code requirements or by a Major's insurance carrier. In addition, all fire protective systems for the Enclosed Mall and Developer Mall Stores must be approved by Factory Mutual Engineering Company and any costs due to compliance shall be paid for by Developer.

(3) The quality of (a) the construction, (b) the construction components, (c) the decorative elements, and (d) the furnishings and the general architectural character and general design (including, but not by way of limitation, landscaping and decorative elements), the material selection, the decor and the treatment values, approaches and standards of the Enclosed Mall and the Developer Mall Stores shall be that of a first-class enclosed regional mall shopping center.

(4) The finished floor surfaces of the Enclosed Mall shall be installed in a continuous plane without steps and established at the same elevation as the corresponding finished floor surface of each adjoining Store at all points adjoining the entrance to such Store and shall be designed to

minimize drainage of sprinkler water from the Enclosed Mall into the Stores of the Majors.

(5) The heating, ventilating and cooling system of the Enclosed Mall shall be capable of maintaining an inside dry bulb temperature of seventy degrees Fahrenheit (70°F), with outside dry bulb temperature of twelve degrees Fahrenheit (+12°F) for heating, and the cooling system shall be capable of maintaining seventy-five degrees Fahrenheit (75°F) dry bulb and fifty percent (50%) relative humidity inside conditions with outside conditions of ninety-four degrees Fahrenheit (94°F) dry bulb and sixty-five degrees Fahrenheit (65°F) wet bulb. The entire system shall be automatically controlled.

(6) The Parties further recognize that the air conditioning and heating of their respective buildings and the Enclosed Mall are critical and that the same shall be designed so that they can be constructed, Operated and maintained so as to not unduly discharge air out or return air into, the Enclosed Mall or Stores, as the case may be.

(7) All designs shall be in accordance with Exhibit B hereof and this REA.

C. Notwithstanding anything contained in this Article 4, each Major, as to its Court, shall have the right of approval, in its sole and absolute discretion, of the design thereof, including without limitation, column locations, ceiling heights, decor, layout, decorative elements, floor elevations, lighting, wiring, landscaping and the furnishings of such portions of the Enclosed Mall. Notwithstanding the right of each such Major to approve or disapprove, as hereinabove provided, no disapproval may be predicated on a requirement of any Major which would materially alter the previously approved (as provided in this Article 4) basic design concept of the Enclosed Mall in general or of a Major's Court in particular.

Section 4.4 Developer Working Drawings. At least sixty (60) days after the date of approval of the Design Development Improvement Plans, Developer shall, at its expense, complete and

deliver to each Major one (1) complete set of reproducible sepias, plus three (3) prints, of such Developer Working Drawings for approval by each Major. "Developer Working Drawings" shall mean those drawings developed from and conforming to the Design Development Improvement Plans and Exhibit B to this REA and otherwise developed in accordance with the requirements of this REA and including, without limitation, the proposed finalized plans and specifications for the Developer Improvements as set forth in Sections 4.2 and 4.3, but the same may omit such portions of the work and material as are related solely to tenants who will occupy Developer Mall Stores.

Section 4.5 [INTENTIONALLY OMITTED].

Section 4.6 Approval and Delivery of Plans. Developer shall cause the Project Architect to have all approved Design Development Improvement Plans stamped "approved", dated and certified by the Project Architect and maintained by it in a safe and convenient place. A reproducible copy thereof shall be delivered to each of the Parties. In the event of designation of another Project Architect, Developer shall cause all Design Development Improvement Plans and other records relating thereto to be delivered to the new Project Architect at the time of such designation.

Section 4.7 Construction Compatibility. Each Major agrees that it will initially construct its Store with at least two (2) levels so as to have an opening onto each level of the Enclosed Mall. In order to produce an architecturally compatible, unified Shopping Center, each Party agrees, subject to Section 4.7 hereof, to consult with Developer and the Project Architect concerning the exterior design, color treatment and exterior materials to be used in the construction and reconstruction of all buildings and structures on its Tract and to consider the views of Developer and the Project Architect with respect thereto prior to selecting the specific materials and colors for its improvements. The design standards for the Perimeter Sidewalks and the Common Improvement Work, including schematic parking layout, landscaped areas and

driveways, shall be compatible for all Parties' Tracts for improvements at or about ground level.

Section 4.8 Plans for Stores of Majors. Within fifteen (15) days after completion of each Major's schematic design plans showing such Major's exterior elevations, color and material of its Store and the Store's interior Mall entrance elevations, color and materials (the "Schematics"), each Major shall cause its Schematics to be delivered to Developer and the Project Architect. Additionally, each Major shall cause to be delivered to Developer and the Project Architect for informational purposes only, forty-five (45) days prior to the commencement of construction of such Major's Store, one set of sepias of such Majors' construction working drawings, plus three (3) prints, said plans (or as so amended by the Major giving copies of its plans as subsequently changed to the other Parties) being hereinafter called the "Major Construction Working Drawings". Developer shall cause the Project Architect to notify each such Party, within thirty (30) days after the receipt of the Schematics and within thirty (30) days after receipt of the Major Construction Working Drawings, of any exterior design features, color or material, which in the Project Architect's reasonable opinion are not compatible and harmonious in relation to the design concept, appearance and quality of the Shopping Center. In the event of any such notice by the Project Architect with respect to any proposed Plans of a Major, such Major agrees to cause its architect thereafter to work in good faith with the Project Architect so that the buildings to be erected and constructed will be architecturally compatible and harmonious with the approved architectural general concept, appearance and quality of the Shopping Center; provided, however, that, in the event of a dispute between the Project Architect and any Major as to such matters, the Major shall have the right to make the final decision in its sole and absolute judgment; provided further, however, that nothing contained herein shall permit any deviation from Exhibit B or from Sections 8.1 and 8.2 hereof. After the completion and opening of its Store each Party shall, at its sole cost and

expense, cause its architect to make a certification as to the number of square feet of Floor Area and gross building area on such Party's Tract. Such certification shall be completed and furnished to each other Party not later than one hundred twenty (120) days following the date on which the Store of such Party first opens for business. In lieu of such certification by a Party's architect, any Party may elect to furnish to the other Parties a written certification of its Floor Area. Such certification by a Party shall be furnished within the time period above provided and shall be signed by an authorized employee, agent or officer of such Party. In the event such certification of Floor Area by the Party's architect or by a Party shows that any Party has constructed Floor Area in excess of its maximum Initial Planned Floor Area, and provided such excess does not require such Party to construct additional Automobile Parking Area pursuant to Section 10.3 hereof, Section 8.1 shall, without necessity of further documentation, be deemed amended as of the beginning of the first Accounting Period of such Party, to reflect the increased maximum Initial Planned Floor Area of any such Party, and each Party's Allocable Share under Section 1.3 shall be correspondingly and appropriately adjusted to the extent provided in such Party's Allocable Share Agreement. Notwithstanding anything to the contrary contained in this REA, during the period of any damage, destruction, razing, rebuilding, repairing, alteration, replacement or reconstruction to, on or of any building in the Shopping Center, the Floor Area of such building shall be deemed to be the same as the Floor Area of such building immediately prior to such period, and upon the completion of the rebuilding, repairing, replacement, alteration or reconstruction of such building or of any addition thereto, the architect of such Party or such Party shall make a new certification of Floor Area for such building as provided in the foregoing provisions of this Section 4.8 and such Party's Allocable Share shall be correspondingly and appropriately adjusted to the extent provided in such Party's Allocable Share Agreement.

Section 4.9 Exercise of Approval Rights. Except with respect to requests for changes which are based upon Developer's failure to conform to the general design data as set forth in Sections 4.1, 4.2 and 4.3 hereof, or other requirements of this REA, no Party shall, in exercising its right of approval over any plans set forth in this Article 4, make any unreasonable request, or any request whatever which would materially or unreasonably increase the charges or cost of the work to be performed.

Section 4.10 Common Improvement Work Plans. Developer shall prepare or cause project professional consultants and utility companies to prepare improvement plans and specifications (hereinafter "Common Improvement Work Plans") for the design and construction of the Shopping Center (excluding each Major's Store) as provided in Article 6. The design criteria for the Common Improvement Work are set forth in the Technical Specifications attached to the Allocable Share Agreements of the Majors. Prior to commencing the above, any Party which has preference as to particular type of installation shall furnish Developer a detailed drawing of such installation or portion thereof for incorporation in the Common Improvement Work Plans. Within fifteen (15) days after the completion of the Common Improvement Work Plans, Developer shall deliver to each of the Majors one (1) complete reproducible set of such Common Improvement Work Plans. All Parties agree that time is of the essence and the notice requirements under Section 28.6 shall not apply to this Section 4.10. All Parties will provide comments to Developer no later than fifteen (15) days after receipt of submittal. All Parties agree that failure to respond within this time period will constitute an approval of the submittal. The Common Improvement Work Plans are not intended to include building improvements to be constructed by the Parties within their respective Store Sites, but such plans shall designate the location of each Store and shall designate the general locations of truck ramps, and shipping and receiving areas serving the Stores. The Common Improvement Work Plans shall include:

(i) Schematic Site Engineering Plans: On or about February 23, 1993, Developer submitted Schematic Site Engineering Plans to each of the Parties for their review and approval. Such plans include anticipated site grading and storm inlet locations, a general utility plan indicating proposed water, wastewater, electric, gas, and telephone distribution on the site, and the tap locations to each Store. These plans shall be in accordance with all applicable municipal, state and federal laws, rules and regulations of all governmental agencies having jurisdiction over the Shopping Center. All utilities shall be below ground.

(ii) Final Site Engineering Plans: Developer shall cause to be submitted Final Site Engineering Plans and specifications in reproducible form to each of the Parties for review and approval. Such Final Site Engineering Plans shall be developed from the approved Schematic Site Engineering Plans. If a Party does not disapprove and specify any objection or make a proposal to the Developer that would modify the Final Site Engineering Plans (such change to not change the approved site plan) within thirty (30) days from the date of receipt of such plans, such plans shall be deemed approved by such Party. If there is an objection or proposal from any Party, the Developer shall cause the plans to be modified to the satisfaction of this disapproving Party, provided the disapproval does not change the previously approved site plan, and that said change is in accordance with reasonable standards and construction methods and procedures.

(iii) Approval and Delivery of Plans: Developer shall cause all Common Improvement Work Plans to be stamped "approved", dated, and signed by the Project Architect or engineer and thereafter maintained in a safe and convenient place. The Developer shall cause a reproducible copy of the

approved Common Improvement Work Plans to be delivered to each Party upon request.

Section 4.11 Changes in Plans. Changes may be made in approved Developer Working Drawings and the Common Improvement Work Plans only by the written approval of the Parties. Any such plans which differ from the last previously delivered plans shall indicate the nature and extent of the changes. The Party or Parties requesting any such changes shall pay any additional costs incurred in connection with such changes; provided, however, the requesting Party or Parties shall pay such additional cost only if: (A) the request for change is made after such Party or Parties has or have first approved the Developer Working Drawings and (B) the request for change is not the result of an error by the Project Architect, governmental requirements or a pre-existing condition. The cost of such changes shall be estimated by the Project Architect and approval obtained from the Party responsible for the payment thereof in its sole discretion prior to issuance of authorization for the work to proceed. If such Party fails to agree to said cost, Developer shall not be obligated to perform the work. In the event any Party shall fail to respond to such change in writing, within thirty (30) days from the date of submission of such change, and Developer shall thereafter have given such Party a second notice and such Party has failed to respond within fifteen (15) days of such second notice, subject to the requirements of Section 28.6C, such change shall be deemed to have been approved by such Party.

ARTICLE 5

CONSTRUCTION OF DEVELOPER IMPROVEMENTS

Section 5.1 Commencement of Construction. Developer agrees, on a date as soon as reasonably possible after approval by the Majors of the Developer Working Drawings and Common Improvement Work Plans, as provided in Article 4, to commence construction of the Developer Improvements and thereafter diligently proceed to completion of same. Developer shall be conclusively deemed to have

commenced construction, for purposes of the requirement set forth in the preceding sentence, upon the date that Developer shall have commenced the actual physical work on the foundations of the Developer Improvements pursuant to firm contracts for the construction of such Developer Improvements. As used in this Article, "construction" includes initial construction under this REA, and except where otherwise specified, subsequent construction, alterations, maintenance, repair, restoration, rebuilding, demolition and razing carried on in the Shopping Center.

Section 5.2 Manner of Construction. The Developer Improvements shall be constructed at Developer's sole cost and expense in accordance with the requirements of this REA, including, without limitation, the approved Developer's Improvement Plans and Working Drawings, in the location shown therefor on Exhibit B, with the exterior walls thereof conforming to the building lines shown on Exhibit B, and not exceeding the height set forth therefor in Exhibit C. The Developer Mall Stores shall contain not less than the Minimum Floor Area set forth in Section 8.1 nor more than the Permitted Expanded Floor Area.

Section 5.3 Time for Completion and Opening of Developer Improvements. On or before the Scheduled Opening Date, but not prior to the date that at least one (1) of the Majors are actually open for business, or are ready to open, Developer shall: (1) complete construction of the exterior walls and roofs, Developer Mall Stores, the Enclosed Mall, and any temporary closures which may be required to conceal non-finished tenant space and (2) have the entire Enclosed Mall open to the public for pedestrian traffic and completely functional and Operating, and free from any obstructions and (3) have used its diligent efforts to have not less than sixty percent (60%) of the Initial Planned Floor Area on each level of the Enclosed Mall either open for business or leased under leases requiring the occupants to open for business on or before the Scheduled Opening Date.

ARTICLE 6

COMMON IMPROVEMENT WORK CONSTRUCTION

Section 6.1 Developer's Construction Duty. Upon approval of the Common Improvement Work Plans provided for in Section 4.10, Developer shall enter into written contracts for all work required to construct the Common Improvement Work, except for the SAD Work. Notwithstanding anything to the contrary contained herein, it is understood and agreed that the SAD Work, although a part of the Common Improvement Work, will be done, performed and constructed by SAD 223 and paid for with funds generated by SAD 223. Developer's contract with its general contractors shall expressly provide that no other Party shall have any liability for any portion of the cost of the construction of said improvements pursuant to such contract. Any such contract or contracts made with a general contractor shall include provisions requiring a bond of each such general contractor covering performance, completion and labor and material payment with respect to that portion of the Common Improvement Work to be performed by each such general contractor, naming the general contractor as principal and the Parties, jointly and severally, as obligees, which bond will cover the full amount of the construction contract price for such Common Improvement Work. Developer agrees to pursue diligently the construction of the Common Improvement Work hereinafter defined and described (excluding SAD Work), in accordance with the Common Improvement Work Plans, and Developer agrees that the Common Improvement Work (excluding SAD Work) shall be substantially completed at least thirty (30) days before the Scheduled Opening Date except for landscaping, finish paving and striping of the Automobile Parking Area for which Developer shall use diligent efforts to complete such landscaping, finish paving and striping not later than seven (7) days prior to the Scheduled Opening Date. Developer shall fully complete all such Common Improvement Work (excluding SAD Work) prior to the Scheduled Opening Date.

Section 6.2 "Common Improvement Work" Defined. The term "Common Improvement Work" refers to the work which (i) Developer

hereby agrees to construct, perform and complete, or (ii) SAD 223 shall construct and complete, in accordance with this Article 6, and shall include the installation and construction of all Common Area improvements and all off-site improvements required to be installed and constructed in accordance with the approved Common Improvement Work Plans. The term "Common Improvement Work" shall not include any work related to the Enclosed Mall or the Perimeter Sidewalks. SAD 223 has employed Easterling & Associates of Albuquerque, New Mexico, as SAD 223's Engineer for the design and inspection of all of the Common Improvement Work which is to be done and paid for by SAD 223 as aforesaid.

Section 6.3 Items Included within Common Improvement Work. The Common Improvement Work shall consist of all work contemplated by the Common Improvement Work Plans (including design, planning, installation, construction, scheduling and coordination of such work), and such other work as may be necessary to accomplish the integrated development of the Common Area, including but not limited to, the following (all items of Common Improvement Work which constitute SAD Work being noted as such):

(A) Providing "On-Site Improvements" which are the following improvements to be installed on the Shopping Center Site:

(1) Demolishing, clearing, grading, excavating, filling, backfilling and compacting the entire Shopping Center Site, including any undercutting and/or stabilization of subgrades pursuant to approved Technical Specifications, excluding the placement and compaction of any backfill adjacent to any Store that may be required as a result of the excavation of the building pad or foundation of such Store, which backfill work shall be done by and at the sole cost and expense of the Party constructing such Store. Notwithstanding

the preceding sentence, Developer shall provide backfill for any Major's Stores, if requested by a Major, to the extent Developer then has such excess backfill available at the Shopping Center Site. Such backfill shall be supplied to such Major without any warranty or representation of Developer as to its suitability for such Major's purposes, and such Major shall Indemnify Developer relating to the backfill. Said clearing and grading will include the construction of any retaining walls (excluding any truck dock retaining walls) and berms within the Automobile Parking Area and along the perimeter of the Shopping Center Site which are necessary to implement the Plot Plan as set forth in Exhibit B to this REA;

(2) Providing a complete Automobile Parking Area lighting system, including concrete bases, conduits, wiring, fittings, fixtures, panelboards, switches, photoelectric switches and/or electric time clocks for the installation and use of said Automobile Parking Area lighting system, and providing parking lot identification and traffic control signs and entrance and exit signs and underground wiring for lighting of all such signs as may be illuminated all in accordance with approved Technical Specifications;

(3) Paving the Automobile Parking Area, including interior roads and road systems

on the Shopping Center Site, including entrance and exit driveways; installing concrete curbs, islands, sidewalks (excluding Perimeter Sidewalks which are to be designed and constructed in accordance with Section 6.7 hereof, and concrete aprons adjacent to each Party's Store); and parking lot striping and painting, including directional painted signs, on the Shopping Center Site; all in accordance with Exhibit B hereto;

(4) Providing the main trunk sanitary sewer and sanitary sewer systems, lines and laterals and appurtenances, which shall conform to approved Technical Specifications (SAD Work);

(5) Providing a fire protection system in accordance with approved Technical Specifications. In addition, all fire protective systems must be approved by Factory Mutual Engineering Company (SAD Work);

(6) Providing suitable electric and gas service in accordance with approved Technical Specifications;

(7) Providing telephone service, telecommunications and, for each Major, cable television service, in accordance with approved Technical Specifications;

(8) Providing storm sewer lines in accordance with approved Technical Specifications (SAD Work) and providing storm sewer laterals in accordance with Technical Specifications;

on the Shopping Center Site, including entrance and exit driveways; installing concrete curbs, islands, sidewalks (excluding Perimeter Sidewalks which are to be designed and constructed in accordance with Section 6.7 hereof, and concrete aprons adjacent to each Party's Store); and parking lot striping and painting, including directional painted signs, on the Shopping Center Site; all in accordance with Exhibit B hereto;

(4) Providing the main trunk sanitary sewer and sanitary sewer systems, lines and laterals and appurtenances, which shall conform to approved Technical Specifications (SAD Work);

(5) Providing a fire protection system in accordance with approved Technical Specifications. In addition, all fire protective systems must be approved by Factory Mutual Engineering Company (SAD Work);

(6) Providing suitable electric and gas service in accordance with approved Technical Specifications;

(7) Providing telephone service, telecommunications and, for each Major, cable television service, in accordance with approved Technical Specifications;

(8) Providing storm sewer lines in accordance with approved Technical Specifications (SAD Work) and providing storm sewer laterals in accordance with Technical Specifications;

(9) Providing domestic water lines and laterals in accordance with approved Technical Specifications (SAD Work);

(10) Providing Site perimeter landscaping and irrigation systems as required to provide for the proper maintenance thereof (SAD Work);

(11) Providing landscaping of the Common Area and irrigation systems as required to provide for the proper maintenance thereof, except the area within the Perimeter Sidewalks as such area relates to any Major's Store; and

(12) Providing all amenities such as benches, trash baskets, public telephones, drinking fountains, bicycle racks, decorative features and other facilities for the comfort of Permittees.

(B) Providing "Off-Site Improvements" which are for the general benefit of the Shopping Center Site including, without limitation, the following improvements to be installed off of the Shopping Center Site:

(1) A water line or lines running to the property line of the Shopping Center Site and connecting the water system on the Shopping Center Site to a municipal water facility, or if such a facility is not available, to an adequate well, reservoir, water tower or other water source approved by the Parties and equipped with adequate pumping facilities, all of which shall comply with all applicable governmental regulations and shall provide an adequate and satisfactory rate of flow and pressure necessary for the full enjoyment of each Party's Store and of the Common

Area on each Party's Tract, including the operation of such a sprinkler system as may be installed by the Parties or as may be required by law or Factory Mutual Engineering Company (SAD Work);

(2) A sanitary sewer line (or lines) running to the property line of the Shopping Center Site and connecting the sanitary sewer system on the Shopping Center Site to municipal or private sewage facilities or, if such facilities are not available, to a sewage system approved by the Parties as to location, engineering and capacity, and which complies with all applicable governmental codes and regulations and is adequate to handle sewage from each Party's Store (SAD Work);

(3) A storm sewer system (or systems) running to the property line of the Shopping Center Site and connecting the storm sewer system(s) on the Shopping Center Site to municipal, county, state, federal or private storm sewer facilities and/or to the Retention Ponds, if any (SAD Work);

(4) Electric lines running to the property line of the Shopping Center Site and connected to the electrical service system on the Shopping Center Site, which shall be of sufficient capacity to service each Party's Store, the Common Area and the Enclosed Mall;

(5) Telephone lines running to the property line of the Shopping Center Site,

together with all connections therefrom to the telephone system on the Shopping Center Site; and

(6) Access Roads and means of ingress and egress and signalization, widening and other street improvements as are shown on Exhibit B, subject to governmental approvals and applicable laws, ordinances, codes and regulations (SAD Work).

All of the above referenced lines and systems shall be located within perpetual easements or public rights-of-way running from the Shopping Center Site to the applicable utility source.

Section 6.4 Insurance. On the date hereof, Developer shall provide each Major with evidence that Developer's contractor (the "Contractor") has obtained the insurance coverage described below. The cost of all such insurance shall be appropriately allocated between On-Site Improvements and Off-Site Improvements and the portion allocable to On-Site Improvements shall be included in the cost of construction. All such insurance shall provide that the same cannot be canceled without at least thirty (30) days prior notice to each Party and that each Party shall be named as an additional insured. Such insurance coverage shall consist of:

(A) Workers' Compensation with limits of liability as required by law and Employer's Liability Insurance with limits of not less than $1,000,000.00 per occurrence in Contractor's name;

(B) Commercial General Liability Insurance (including contractual liability recognizing this REA and completed operations) written on an occurrence basis in Contractor's name with a combined single limit of not less than Five Million Dollars ($5,000,000.00), which may be a combination of primary and excess (umbrella) liability coverage; and

(C) Automobile Liability Insurance in Contractor's name with bodily injury and property damage limits of not less than Five

Million Dollars ($5,000,000.00), which may be a combination of primary and excess (umbrella) liability coverage; and

(D) Contractual Liability Insurance in Contractor's name specifically endorsed to cover the Indemnity agreement required of Contractor (set forth below). Limits of liability shall not be less than Five Million Dollars ($5,000,000.00), which may be a combination of primary and excess (umbrella) liability coverage; and

(E) Builder's Risk Insurance in Contractor's name in all risks policy customarily used in the State of New Mexico. The coverage shall be in the amount of one hundred percent (100%) of the completed insurable value of the Developer Improvements.

Developer agrees that all construction contracts shall contain an Indemnity agreement whereby the Contractor shall Indemnify the Parties against claims of third parties arising out of injuries or damages suffered by the acts or omissions of the Contractor under such construction contract. The foregoing Indemnity shall cover, without limiting the foregoing language, all acts and omissions of, and all injury to, the officers, employees and agents of contractor and its subcontractors in connection with the work required to be done under such construction contract. Developer shall use diligent efforts to cause each construction contract with the Contractor and each insurance policy provided by Contractor to contain a waiver of subrogation clause in favor of each Party for damage to property of each Party.

Section 6.5 Total Expenditure to be Paid by Parties. All costs and expenses for the Common Improvement Work (excluding the SAD Work) required hereby are to be paid and advanced by Developer, and any reimbursement by the Majors shall be in the manner and in the respective amounts provided for in the individual Allocable Share Agreement entered into between Developer and each of the Majors. Any costs and expenses in excess of such reimbursements actually paid or that should have been paid shall be borne by Developer. Each of the Parties agrees that its rights, duties and obligations concerning the Common Improvement Work may be modified

by its Allocable Share Agreement. In the event there is any conflict or inconsistency between any provision of this REA and any provision of an Allocable Share Agreement, the provision of the Allocable Share Agreement shall govern as between the Parties thereto.

Section 6.6 Separation of Work. For all purposes applicable to the provisions of statutory law of the State of New Mexico, the Common Improvement Work the Enclosed Mall, and each of the Stores, which may be integrated, shall nevertheless each be deemed a separate and distinct work or improvement as to each Tract.

Section 6.7 Construction of Perimeter Sidewalks. Subject to the applicable Allocable Share Agreement, each Party shall construct or shall cause the construction of that part of the Perimeter Sidewalks which lies within its Tract, which construction shall be performed at such Party's sole cost and expense in accordance with the plans and specifications with respect thereto and shall not be a part of the Common Improvement Work. The location and extent of the Perimeter Sidewalks shall be as designated on Exhibit B hereto, provided, however, the Parties individually reserve the right to make minor changes in the design, construction, location and extent of said Perimeter Sidewalks within Store Sites to the extent the said changes are necessitated by permitted changes in building design or configuration of a Party's Store, and such minor changes shall not require the approval of the other Parties. Said changes to the Perimeter Sidewalks shall be at the sole cost and expense of the Party so requesting or making such changes. The curbs shall be constructed by Developer for the Majors as part of the Common Improvement Work (except those on the Dillard Tract, which shall be constructed by Dillard).

Section 6.8 Scheduling and Completion of Common Improvement Work. Developer shall cause the performance of the Common Improvement Work under (other than SAD Work to be done and paid for by SAD 223) any contract to be scheduled by the Project Architect in consultation with the Parties to coordinate such Common

Improvement Work with the work of construction of the Stores of such Parties and of the Developer Improvements. After such consultation, Developer shall submit to each other Party for approval time schedules for preparation of the building pads and performance of all other Common Improvement Work and the plot plan referred to in Section 9.3(A), prepared so as to enable each Party to achieve its Scheduled Opening Date. In addition, Developer shall periodically deliver to each Party updated time schedules, including any necessary revisions thereto approved by the Parties, concerning such matters for the purposes hereinabove set forth. Developer agrees, on a date as soon as reasonably possible after approval of the Common Improvement Work Plans provided for in Section 4.10, to commence construction of the Common Area work and thereafter diligently proceed to completion.

Section 6.9 Failure of Performance. If Developer fails to complete construction of the Common Improvement Work by the date required in Section 6.1, any Party may give a written notice to Developer, with a copy of such notice to each other Party, setting forth the specific items of Common Improvement Work that have not been completed in accordance with Section 4.10 as required in this REA. If such items are not completed within thirty (30) days after receipt of such notice, or if the completion of such items is such that it cannot be completed within such time, and if Developer fails to commence the completion of such items or fails to use its diligent efforts to cause the general contractor to commence the completion of such items within such period and diligently prosecute the same thereafter to completion, then, in either such event, the Party giving such notice shall have the right to complete the construction of such items of Common Improvement Work, including the right to enter upon any Tract (but not the Floor Area on such Tract) to complete such items and to assume all obligations of Developer with respect to the completion of such items, and Developer shall pay the reasonable and necessary costs thereof. Any such amounts so expended by a Party may be withheld from amounts otherwise payable to Developer or collection may be

otherwise sought by such Party; provided, however, these provisions shall be without prejudice to Developer to contest the right of the Party electing to complete the construction to complete such items of Common Improvement Work or expend such monies and to withhold such amounts. If any Party elects to complete construction of such items of Common Improvement Work, such construction shall be done to the same quality, standard and manner as required of the non-performing Party by the other provisions of this Article 6, and the Party performing such work shall Indemnify the other Parties (except the non-performing Party) in connection with such work.

Section 6.10 SAD Work. Notwithstanding anything contained herein to the contrary, Developer agrees that in the event SAD 223 fails to complete the SAD Work, Developer will complete or cause to be completed the SAD Work described above prior to the Scheduled Opening Date. If Developer is unable to cause the SAD Work described above to be completed prior to the Scheduled Opening Date, the Majors' sole remedy shall be to suspend their obligation to open their Stores to the public on the Scheduled Opening Date and the Majors shall not be required to open their Stores until the SAD Work described above is completed. Developer agrees to provide to each Major, not less than one (1) time in any calendar month, monthly updates and schedules regarding the status of the SAD Work.

ARTICLE 7

CONSTRUCTION OF STORES BY MAJORS; OPENING DATES

Section 7.1 Construction. Subject to the provisions of this Article 7, each Major agrees to cause construction of its Store to be commenced, and thereafter diligently prosecute to completion, so that each such Store shall be constructed within its Store Site, with at least the Initial Planned Floor Area and no more than the Permitted Expanded Floor Area as specified therefor in Section 8.1, and to no greater height than as specified therefor in Exhibit C, and shall be open to the general public for business on or before its Scheduled Opening Date; provided, however, in no event shall any Major be required to commence construction prior to a date

which is fourteen (14) months earlier than its Scheduled Opening Date or earlier than thirty (30) days after the occurrence of all of the following: (A) delivery by Developer to and written acceptance by such Major of its building pad prepared in accordance with the provisions of approved Technical Specifications of such Major and completion by Developer (with notice from Developer to each Major of completion) of such grading in the Shopping Center as necessary to permit commencement by such Major of such construction, (B) approval by the Majors of the Design Development Improvement Plans and Common Improvement Work Plans, (C) installation by Developer (and notice to such Major of installation) of temporary utilities and construction roads and staging areas for the construction of the Major's Store, (D) prior commencement and diligent continuation of construction by Developer of the Common Improvement Work pursuant to the provisions of Article 6 hereof, (E) approval by Developer of all necessary construction easements to the Major as provided in Section 2.4 hereof, (F) prior commencement and diligent continuation of construction of the Developer Mall Stores and Enclosed Mall pursuant to the provisions of Articles 5 and 6, (G) receipt by Developer of all governmental entitlements, permits and approvals necessary to commence construction upon the Developer Tract and the Common Area, and (H) the non-existence of any conditions (except deferral of Penney construction as permitted by Section 7.4), which would prevent the other Majors from commencing construction of their respective Stores at the time such Major is prepared to commence such construction.

"Commence (or "commencement" of) construction", used in this Article 7 with respect to any Tract, means to commence (or the commencement of) actual physical work on the foundations to be built on any Tract or as to Common Improvement Work, to commence actual physical work.

Each Major agrees, on not less than twenty (20) days' written notice from Developer, that it shall cause its staging area to be relocated on one occasion to an area and on a date acceptable to

Developer and such Major to accommodate Developer's Common Improvement Work.

Section 7.2 Opening Dates of Majors. Subject to Sections 6.10 and 7.1 and Article 21, each Major shall be open for business with the public not later than its Scheduled Opening Date; provided, however, that no Major shall be required to open for business until (A) the entire Enclosed Mall, together with all related cross-malls, shall have been completed and open to the public for pedestrian traffic and shall be completely functional and Operating, including being air-conditioned, heated, ventilated, lighted, decorated and landscaped and free from obstructions, all as required by this REA; (B) thirty (30) days after substantial completion of the Common Improvement Work (including, without limitation, the Utility Lines and the off-site improvement work required pursuant to Articles 4 and 6); (C) sixty percent (60%) of the Floor Area of Developer Mall Stores is open or about to open (which sixty percent (60%) may include those tenants obligated to be open for business with the public within thirty (30) days), and the tenants comprising such sixty percent (60%) are reasonably evenly distributed on two (2) floors and throughout the Enclosed Mall; (D) compliance by Developer with the requirements of Article 5 and Sections 6.1 and 6.2; and (E) for Dillard, Ward, Mervyn's and Foley's, two (2) other Majors are open or are ready to open simultaneously, and for Penney, Dillard and two (2) other Majors are open or are ready to open simultaneously; and provided, further, that nothing contained herein shall preclude a Major from opening prior to the Scheduled Opening Date even though the conditions set forth above have not been satisfied, provided such Major coordinates all opening activities with Developer.

In the event of any delay by Developer in performing any of its obligations pursuant to this Section 7.2 or by SAD 223 in connection with the SAD Work as identified in Section 6.3, the Scheduled Opening Date for the Majors shall be postponed for a time period no greater than the number of days comprising such delay by Developer or SAD 223.

Anything herein to the contrary notwithstanding, in no event shall any Major be required to open between November 1 of any calendar year and February 1 of the next succeeding calendar year, or during the forty-five (45) day period immediately preceding Easter Sunday in any calendar year or during the period from May 1 to July 30 of any calendar year.

Section 7.3 Delay in Construction. If for any reason any Major is entitled to open after its Scheduled Opening Date and does not open on its Scheduled Opening Date, such Major agrees that it will cause its work to be done in such a manner as will not unduly interfere with the operation of the Shopping Center and the use and enjoyment thereof by Occupants and their Permittees. Such delayed Major shall take and observe all necessary reasonable precautions to prevent and avoid any undue interference with or interruption of the normal operation of the Shopping Center or any injury to persons or property during the performance of its work, and shall confine the storage of equipment and materials and the staging of its construction to its staging area shown on Exhibit B and use diligent efforts to have its contractors and subcontractors use only those construction entrances designated by Developer and approved by the Majors for such purposes. Notwithstanding any waiver or release of liability or any other Indemnity contained in this REA, it is understood and agreed that such delayed Major shall Indemnify the other Parties and their respective Permittees against all loss, damage, claims, costs, expenses, actions and liabilities actually or allegedly arising out of the work to be done and performed by it and its contractors on the Shopping Center Site, including, without limitation, any and all claims for bodily injury and property damage; and that such Major shall, at its sole cost and expense, repair, replace and restore any improvements of any other Party, including Common Area, Developer Improvements, Store Sites, Tracts or Stores of any other Party, or any other work-in-place on the Shopping Center Site, which is damaged or destroyed as the result of its own construction.

Section 7.4 Deferral of Penney Construction. It is understood and agreed that, because Penney's Scheduled Opening Date is later than the Scheduled Opening Dates of the other Parties, Penney will be performing its construction work after construction of the Common Improvement Work, the Developer Improvements and the other Majors' Stores have been completed and the Common Area and Stores of the other Parties have been opened for business with the public. Accordingly, Penney covenants and agrees that it will cause its work to be done in such a manner as will not unduly interfere with the operation of the Shopping Center and the use and enjoyment thereof by Occupants and their Permittees. Penney shall take and observe all necessary reasonable precautions to prevent and avoid any undue interference with or interruption of the normal operation of the Shopping Center or any injury to persons or property during the performance of its work, and shall confine the storage of equipment and materials and the staging of its construction to its staging area shown on Exhibit B and use diligent efforts to have its contractors and subcontractors use only those construction entrances designated by Developer and approved by the Majors for such purposes. Notwithstanding any waiver or release of liability or any other Indemnity contained in this REA, it is understood and agreed that Penney shall Indemnify the other Parties and their respective Permittees arising out of the work to be done and performed by it and its contractors on the Shopping Center Site, and that Penney shall, at its sole cost and expense, repair, replace and restore any Common Area, Developer Improvements, Store Sites, Tracts or Stores of any other Party, or any other work-in-place on the Shopping Center Site, which is damaged or destroyed as the result of its construction.

ARTICLE 8

FLOOR AREA, USE, OPERATION, SIZE AND HEIGHT

Section 8.1 Floor Area. The Initial Planned Floor Area and the Minimum Floor Area of each of the Parties, and the Permitted Expanded Floor Area of May and Dillard and corresponding Minimum

Floor Area for such expansions, on the Shopping Center Site is as follows:

	Initial Planned Floor Area	Minimum Floor Area	Permitted Expanded Floor Area
Developer Mall Stores	314,583	240,000	---
Ward Store (exclusive of Ward TBA)	94,090	78,000	---
Ward TBA	8,370	-0-	---
May Store	161,348	126,000	198,610
Dillard Store	165,305	140,000	203,705
Penney Store	120,916	93,000	159,716
Mervyn's Store	81,527	70,000	---
Entertainment/cinema	100,800	N/A	---

Each Party shall initially construct not less than its Initial Planned Floor Area and not more than the Permitted Expanded Floor Area as set forth above, attached and having direct access to the Enclosed Mall on two (2) levels as shown on Exhibit B.

Section 8.2 Heights and Locations. The heights of buildings in the Shopping Center Site shall not exceed those specified in Exhibit C. Roof top mechanical and communication equipment (such as satellites and microwave dishes, antennas, laserheads and associated equipment) not located within a penthouse or the like shall be screened so as to be hidden from public view from adjacent public streets and highways in accordance with all applicable federal, state and local laws, rules and regulations, except for visibility from street level which is even with or higher than the roof of the buildings on which such mechanical equipment is located.

Each of the Parties covenants and agrees with each other that no building or buildings or improvements, other than Common Area improvements, shall be erected or expanded on its Tract, except within its Store Site.

Section 8.3 Uses. Neither the Shopping Center Site nor any part thereof shall be used, and no Store or other improvement thereon shall be constructed, maintained or used, for any use or purpose during the Term of this REA other than (A) retail merchandising and retail service establishments customarily found in a first class enclosed mall regional shopping center in New Mexico (including, without limitation, restaurants, cafeterias, theaters, the Ward TBA and financial institutions and services) and (B) offices incidental to a retail use which are compatible with a first class regional shopping center containing a two (2) level enclosed mall, except that the Developer Mall Stores may contain an auditorium or public meeting rooms (which auditorium or public meeting rooms shall not contain more than 5,000 square feet) or such other uses as are permitted in this REA as aforesaid. Notwithstanding the foregoing, at any time when one or more Majors is operating (i) no building in the Shopping Center Site shall be used primarily for general office purposes, (ii) not more than ten percent (10%) of the Floor Area of the Developer Mall Stores may be used for retail service uses and office uses (excluding theater or restaurants from such calculation) and (iii) no portion of the Developer Improvements shall be utilized as a theater and/or an arcade except in such location(s) specifically shown on Exhibit B.

Section 8.4 Limitation on Detrimental Characteristics. No use or operation will be made, conducted or permitted on any part of the Shopping Center Site which use or operation is clearly incompatible with or inimical to the development or operation of the Shopping Center as a first class enclosed mall regional shopping center. Included among the uses which are so incompatible or inimical are uses or operations which produce or are accompanied by the following characteristics, which list is not intended to be all-inclusive:

(A) Any noise, litter, odor or other activity which may constitute a public or private nuisance;

(B) Any unusual firing, explosive or other damaging or dangerous hazard;

(C) Any warehouse operation, or any assembling, manufacturing, distilling, refining, smelting, industrial, agriculture, drilling or mining operation;

(D) Any trailer court, mobile home park, lot or showroom for sale of new or used motor vehicles, labor camp, junk yard, stock yard or animal raising (other than pet shops and veterinarians, provided they otherwise comply with the provisions of this Section 8.4);

(E) Any dumping, disposal, incineration or reduction of garbage or refuse other than handling or reducing such waste if produced on the premises from authorized uses and if handled in a reasonably clean and sanitary manner;

(F) Any commercial laundry or dry cleaning plant, laundromat, veterinary hospital or car washing establishment;

(G) Any automobile body and fender repair work or any gasoline or fuel pumps, and except for the Ward TBA, an automobile service station; or

(H) Any automobile customizing work unless such work is performed at the Ward TBA;

(I) Any health club or fitness center;

(J) Adult book stores or cinemas, "peep shows", or operation of a business devoted primarily to providing entertainment or the sale of products of an obscene or pornographic nature or of a predominantly sexual nature;

(K) Any cemetery, mortuary or crematorium; and

(L) Any theatres or arcades except as shown on Exhibit B.

Section 8.5 Non-Interference With Common Area. In order to prevent interference with the use of the easements granted to the Parties under Article 2 or with the proper Operation and appearance of the Shopping Center, no merchandise and/or services shall be displayed, sold, leased, stored or offered for sale or lease outside the physical limits of the Floor Area, except for occasional Shopping Center-wide promotions first approved by the Parties in their reasonable discretion; provided, however, in no event shall any such promotions be held within the Automobile

Parking Area unless approved by the Majors, in their sole and absolute judgment, or in a Major's Court, unless approved by the Major, in its sole and absolute judgment.

Section 8.6 Obstructions. No fence, structure or other obstruction of any kind (except as may be permitted herein or indicated on Exhibit B, or except for decorative features and customer conveniences as shown on the approved Common Improvement Work Plans) shall be placed, kept, permitted or maintained upon the Common Area.

Except as otherwise provided in this REA, no changes (exclusive of any changes required by law) shall be made in the Common Area or the location or design of the Common Improvement Work on a Tract or in any improvements, tabulations or notations shown on Exhibit B prior to the Termination Date except for minor changes to amenities and landscaping adjacent to each Party's Store or within the Enclosed Mall and no changes shall be made in the Court of any Major without the prior approval of such Major, which may be withheld in the sole and absolute discretion of such Major.

Section 8.7 Kiosks and Merchandise Carts.

A. Notwithstanding anything to the contrary contained in this REA, Developer shall be permitted to conduct retail activities from no more than four (4) kiosks within the Enclosed Mall, which kiosks may only be located within the areas specifically shown therefor as "Kiosk Areas" on Exhibit B, and provided further, that each such kiosk does not exceed twelve (12') feet in height, does not occupy an area which exceeds 150 square feet, and provides not less than the greater of: (i) twelve feet (12'), or (ii) the distance required by applicable building codes for Bernalillo County, New Mexico and for the State of New Mexico, of lateral clearance around all sides of each such kiosk for unimpeded pedestrian passage. No kiosks shall be erected at any other location in the Shopping Center unless approved by all Parties to this REA, except for one (1) courtesy and public information kiosk in the Enclosed Mall in the location designated on Exhibit B, which shall not exceed ninety-six inches (96") in height and one hundred

(100) 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 only in those areas of the Enclosed Mall approved in writing by the managers of the Stores of the Majors. 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 designated as such on Exhibit B. No kiosk shall restrict visibility to any of the Major's signs nor contain any exposed electrical cords or conduits beyond the area designated on Exhibit B for kiosks.

B. Notwithstanding anything to the contrary contained herein, the Parties agree that the Developer shall be permitted to conduct retail activities from no more than twenty (20) merchandise carts within the Enclosed Mall, which merchandise carts may only be located within the area specifically shown therefor as "Cart Areas" on Exhibit B and shall be arranged to promote reasonable access and pedestrian traffic in the Cart Areas.

All such retail sales made from the merchandise carts shall be conducted (1) in conformity with first class shopping center industry practice and standards, (2) so as not to interfere with the use of, access to, or obstruct the visibility of the entrances to the Stores of the Majors or the signs of such Majors, (3) so as to maintain a minimum clearance around all sides of each merchandise cart of at least twelve feet (12'), so as not to impede or interfere with circulation of pedestrians within the Enclosed Mall and the use of Permittees of the Enclosed Mall, (4) so that all merchandise, fixtures, storage and display cases and boxes, and all other related paraphernalia, shall be on or within the merchandise carts and not under or beside the merchandise carts, (5) so as not to create any litter or excessive noise, (6) so that the merchandise carts will remain in a stationary position during the hours of operation of the same, and (7) so as not to contain any exposed electrical cords or conduit beyond the area designated

on Exhibit B for each merchandise cart. The merchandise carts shall be of open construction and shall not exceed eight feet (8') in height, eight feet (8') in length and four feet (4') in width. No merchandise cart shall be used as a food or beverage dispensing facility, except for the sale of packaged food merchandise intended for consumption away from the Shopping Center; provided, however, that nothing contained herein shall prohibit or restrict the use as a "food court" of that portion of the Shopping Center designated as such on Exhibit B.

Section 8.8 Expansion of May, Dillard and Penney. May, Dillard and Penney each have the right (but not the obligation) at any time and from time to time, to expand their respective Stores to the Permitted Expanded Floor Areas (each hereinafter called an "Expansion") to be located in the expansion areas of the respective Tracts shown and designated as "Expansion Area" on Exhibit B. The Permitted Expanded Floor Area of such Expansion Area shall be attached to and integrated with the Major's Store. On or before the time construction of such Expansion is commenced, the Major causing such Expansion shall perform all modifications and restoration to add to and replace Automobile Parking Area on such Major's Tract as required in accordance with plans and specifications prepared by such Party and approved by the other Parties, to provide sufficient Automobile Parking Area for such Expansion to satisfy the parking ratio requirements of Section 10.3. Except as otherwise provided in this Section 8.8, such Major shall, at its own cost and expense, perform all work required to modify and restore the Common Area due to construction of the Expansion. Each Major shall have the option to relocate and to require the Developer to relocate any utilities affected by such Expansion and the relocating Major shall reimburse Developer for all such relocation costs. In proceeding with an Expansion, the Majors shall comply with Sections 4.6, 4.7, 4.9 and Articles 6 and 9. The Expansion Areas shown on Exhibit B shall be Common Area until construction of an Expansion is commenced.

ARTICLE 9

GENERAL CONSTRUCTION REQUIREMENTS

Section 9.1 Interference With Construction. Each Party severally agrees, as to any work performed by it during the Term of this REA, to perform such work (A) so as not to cause any unnecessary increase in the cost of construction of any of the other Parties, (B) so as not to interfere unreasonably with any construction work being performed on the remainder of the Shopping Center Site, or any part thereof and (C) so as not to interfere unreasonably with the use, occupancy or enjoyment of the remainder of the Shopping Center Site or any part thereof.

Section 9.2 Construction Barricades. From and after the opening of any Party's Store abutting on the Enclosed Mall, but not prior to its Scheduled Opening Date, each Party (and such Party's Occupants) thereafter erecting or constructing any building shall erect and construct, or cause to be erected and constructed, a woven wire or solid barricade at least eight feet (8') in height, surrounding the building or portion thereof so being constructed. Such construction barricade shall be kept in place, in good condition and repair, until hazardous conditions, if any, to Permittees no longer exist and until the building so being constructed is secure from unauthorized intrusion. All solid barricades shall be painted in colors approved by the Project Architect.

Section 9.3 Submission of Plans and Schedule. At least sixty (60) days' prior to the commencement of the work to be performed by any Party, Developer shall submit, or cause the Project Architect to submit, to each Party for approval (which approval shall not be unreasonably withheld): (A) a plot plan of the Shopping Center showing, as respects the improvements to be constructed by each Party, material and equipment storage areas, construction shacks and other temporary improvements including staging areas, access routes to be used during the course of such construction, and workers' parking area; and (B) a time schedule indicating the approximate date or dates upon which each portion of the Shopping

Center used for the purposes referred to in the preceding clause (A), including On-Site Improvements and pad preparation for each Major, shall cease to be so used by each Party. Within thirty (30) days after the submission of such plot plan and such time schedule, each Party shall notify the Project Architect of its comments and the Project Architect shall notify the Party submitting the same whether the same are approved or disapproved, specifying the reason therefor if disapproved, provided that a failure by the Project Architect to give such notice within thirty (30) days of receipt of such comments shall constitute approval thereof by the Project Architect. If the plot plan and/or the time schedule shall be so disapproved (specifying the reasons for such disapproval), the Project Architect and the Party or Parties affected shall coordinate the revision of the same in order to prevent conflicts in construction.

Section 9.4 Workmanship. Each Party shall obtain prior to commencement of any construction to be performed hereunder all permits, consents, licenses, approvals and authorizations from any governmental or quasi-governmental agencies or bodies necessary for commencement and performance of such construction. Each Party agrees that all construction to be performed hereunder by such Party during the Term of this REA shall be done in a good and workmanlike manner, with first-class materials and in accordance with all applicable laws, rules, ordinances and regulations and the terms of this REA. Each Party shall pay all costs, expenses, liabilities and liens arising out of or in any way connected with its construction. Any construction commenced shall be diligently and expeditiously prosecuted to completion. Developer shall, upon demand, deliver to the other Party or Parties demanding the same, an architect's certificate or other evidence of completion of the Common Improvement Work in compliance with all applicable laws, ordinances, regulations and rules and in substantial compliance with the approved Common Improvement Work Plans, and shall provide evidence, upon a Major's request, that all costs, liabilities and liens arising out of or in any way connected with such construction

have been fully paid and discharged of record, or contested and bonded, in which event any judgment or other process issued in such contest shall be paid and discharged before execution thereupon. Nothing herein shall be deemed to prohibit a lien secured by a Mortgage on a Tract.

Section 9.5 Coordination. Each Party, as respects its construction, shall use all reasonable efforts to cause its architects and contractors to cooperate and coordinate its construction with the architects, contractors and construction work of the other Parties to the extent reasonably practicable, to achieve the objectives set forth in Sections 9.1 and 9.3 of this REA.

Section 9.6 Mechanic's Liens. In the event any mechanic's liens or other statutory lien shall be filed against the Tract of any Party, the Party who ordered or contracted for the work or materials or which caused the same to be ordered or contracted on account of which the lien was filed hereby covenants (A) to pay the same and have it discharged of record, promptly, or (B) (1) to take such action as may be required to reasonably and legally object to such lien or to have such lien removed from such Tract, and (2) to furnish such affidavits, Indemnities or other agreements as may be required to obtain title insurance coverage against any loss arising out of such lien, and in all events agrees to have such lien released and discharged prior to the foreclosure of such lien by paying the indebtedness which gave rise to such lien or by posting such bond or other security as shall be required by law to obtain such release and discharge. A Party's obligation to observe and perform any provision of this Section 9.6 shall survive expiration of the Term of this REA.

Section 9.7 Indemnity. Each Party, as to work or materials ordered or contracted for by it or its Permittees, or deemed to have been ordered or contracted for by it (Developer being deemed to have contracted for all Common Improvement Work), covenants and agrees to Indemnify each other Party and the Tract of each other Party on account of claims of lien of laborers or materialmen, or

others (including any attorneys fees incurred by any other Party on account of such claims of lien of laborers or materialmen, or others), for or arising out of work performed or supplies furnished, pursuant to such order or contract and against all claims, costs, expenses and liabilities attributable to any such work.

ARTICLE 10

OPERATION AND MAINTENANCE OF ENCLOSED MALL AND OTHER COMMON AREA

Section 10.1 Enclosed Mall - Standards. From and after the Scheduled Opening Date, if at least one (1) Major is open and Operating, Developer shall Operate and maintain, or cause to be Operated and maintained, the Enclosed Mall in accordance with Section 20.1 and with Exhibit E and in first-class good order, condition and repair, without expense to any Major, except as set forth in the separate Allocable Share Agreements between Developer and each Major. As used in this Article 10, the term "maintain", and various forms thereof, shall mean, collectively, inspect, maintain, clean, repair, replace and, where appropriate, light.

Without limiting the generality of the foregoing, Developer, in the maintenance of the Enclosed Mall in accordance with the practices prevailing in the operation of similar type first-class multi-level enclosed mall regional shopping centers in New Mexico, shall observe the following standards:

A. Maintain the floor surface of the Enclosed Mall, keeping it level and smoothly and evenly covered with the type of surfacing material originally installed thereon, or such substitute thereof as shall have been approved by the Parties.

B. Regularly remove all papers, debris, filth and refuse from the Enclosed Mall and wash or thoroughly sweep the surface of the Enclosed Mall.

C. Maintain and regularly clean lighting fixtures and other lighting equipment within the Enclosed Mall and relamp and

reballast promptly when needed, except any accent lights installed by a Major pursuant to Section 2.8.

D. Maintain the landscaping within the Enclosed Mall, refurbishing and replacing as necessary to keep all such landscaping in a first-class, thriving condition.

E. Maintain, repair and replace all signs of the Enclosed Mall and use all reasonable efforts to cause the Occupants of the Developer Mall Stores to maintain their storefront signs in a clean and orderly condition, including relamping and repairing as may be required.

F. Employ courteous trained security personnel to patrol the Enclosed Mall, in such numbers and during Store hours and such other hours, as may be prudent for the safe and orderly Operation of the Enclosed Mall.

G. Maintain and keep in a sanitary condition public restrooms and other common use facilities within the Enclosed Mall.

H. Clean, repair, replace and maintain all utility systems that are a part of or serve the Enclosed Mall.

I. Clean and maintain the structure of the Enclosed Mall, the roof, skylights, vertical transportation equipment, wall surfaces, automatic door openers, doors and other appurtenances to the Enclosed Mall, including the attachments which are constructed by the Developer between the Enclosed Mall and each Major's Store.

J. Maintain the heating, ventilating and cooling system of the Enclosed Mall in good order, condition and repair, repairing and replacing elements and systems as necessary so that at all times such system shall operate within the standards prescribed in Section 4.3B.

K. Furnish necessary pest (including rodent) abatement controls.

L. Observe and enforce the provisions of Exhibits D and E as they relate to the Enclosed Mall.

Section 10.2 Common Area (Other Than Enclosed Mall) - Standards. From and after the Scheduled Opening Date, Developer shall Operate and maintain, or cause to be Operated and maintained,

all of the Common Area, exclusive of the Enclosed Mall , in good order, condition and repair.

Without limiting the generality of the foregoing, Developer, in the maintenance of the Common Area, exclusive of the Enclosed Mall, shall comply with the practices prevailing in the operation of similar type first-class multi-level enclosed mall regional shopping centers in New Mexico and shall observe the following standards:

A. Maintain, repair and replace the surface of the Access Roads, Automobile Parking Area and sidewalks (including Perimeter Sidewalks) keeping all of the foregoing level and smoothly and evenly covered with the type of surfacing material originally installed thereon, or such substitute thereof as shall be in all respects equal thereto in quality, appearance and durability and approved by the Parties, and free of accumulated surface waters, snow and ice.

B. Regularly remove all papers, debris, filth and refuse from the Shopping Center and wash or thoroughly sweep paved areas as required.

C. Maintain, repair and replace such appropriate parking area entrance, exit and directional signs, markers and lights in the Shopping Center as are required in this REA.

D. Clean and maintain Common Area lighting fixtures and other lighting equipment of the Shopping Center (but not those on or within the buildings of Occupants) and relamp and reballast as needed and replace promptly upon failure to perform, except any exterior lights installed by a Major pursuant to the provisions of Section 2.8.

E. Repaint striping, and replace and repair markers, directional signs, traffic control devices, and the like, as necessary to maintain the Common Areas in a first-class condition.

F. Maintain, repair and replace landscaping (excluding landscaping within Perimeter Sidewalks which is provided for in Section 10.10) as necessary to keep in a first-class thriving condition.

G. Clean and maintain signs of the Shopping Center (but not those of Occupants), including relamping and repairs as needed.

H. Employ courteous trained security personnel for Common Area patrol in such numbers and during Store hours and such other hours as are prudent for the safe and orderly Operation of the Common Area and for the safety and security of Permittees.

I. Furnish necessary mosquito and pest abatement controls.

J. Clean, repair, replace and maintain all Common Utility Lines to the extent that the same are not cleaned, repaired, replaced and maintained by public or private utility companies.

K. Observe and enforce the provisions of Exhibits D and E as they relate to the Common Area, exclusive of the Enclosed Mall.

Section 10.3 Automobile Parking Requirements. Subject to Section 16.4 hereof, at all times during the Term of this REA each of May, Penney, Dillard and Developer shall maintain upon its Tract automobile parking spaces equal to the greater of (a) 5.0 automobile parking spaces for each 1,000 square feet of Floor Area on its Tract, all as more particularly shown on Exhibit B hereto, or (b) the number of spaces required by any applicable governmental requirement. Subject to Section 16.4 hereof, at all times during the term of this REA Mervyn's and Ward shall maintain upon their respective Tracts automobile parking spaces equal to the greater of (a) 4.6 automobile parking spaces for each 1,000 square feet of Floor Area on its Tract, all as more particularly shown on Exhibit B hereto, or (b) the number of spaces required by any applicable governmental requirement. Developer represents that, as of the date hereof, the Shopping Center Site contains at least 5.0 automobile parking spaces for each 1,000 square feet of Floor Area on the Shopping Center Site (prior to any expansion by Dillard, May or Penney). In the event Dillard, May or Penney expands its Store, as provided herein, said Party shall maintain on its Tract automobile parking spaces equal to the greater of (i) 4.6 spaces for each 1,000 square feet of Floor Area on its Tract or (ii) the number of spaces required by any applicable governmental requirement.

Unless applicable requirements of any governmental agency having jurisdiction over the Shopping Center require otherwise, and except for certain reduced width parking spaces Developer may construct as shown on Exhibit B, each parking space, regardless of angles of parking, shall have a width of nine feet (9') on center, measured at right angles to the side line of the parking space, all as more particularly shown in typical parking layout details on Exhibit B.

Developer agrees initially to construct the Automobile Parking Area in accordance with the requirements of Article 6 hereof and shall not alter the striping of the Automobile Parking Area on a Majors' Tract or on any other Tract without the consent of such Major, each in its sole and absolute discretion. Developer further agrees that, in connection with any such restriping it shall not reduce the number of parking spaces on each level on each Tract or modify the widths of parking spaces or the angle of parking other than as permitted above. Each Party severally agrees with each other Party to take no action which would reduce the parking ratio below that specified herein. No Party shall increase the number of reduced width parking spaces, if any, above the number of such spaces shown for such Party's Tract on Exhibit B.

During every period commencing one-half hour before any Major's Store is open for business and for not less than three-quarters of an hour after the latest of the Majors' Stores shall close, the Automobile Parking Area shall be kept lighted and open to Permittees. Any Party Operating after 10:30 P.M. shall pay for the cost of lighting the Automobile Parking Area after 10:30 P.M. in the ratio that the Floor Area of the Party so Operating bears to the Floor Area of all Parties Operating after 10:30 P.M. The minimum standard of illumination of the Automobile Parking Area shall be one (1) foot candle of lighting minimum maintained measured at grade, and four (4) foot candles of lighting minimum maintained in the whole measured at grade at all Shopping Center automobile entrances and exits. The Automobile Parking Area shall be kept lighted for security purposes seven (7) days each week during the

hours of darkness that full lighting is not required, to twenty-five percent (25%) of full intensity of the lighting system, uniformly distributed throughout the Automobile Parking Area.

Section 10.4 Indemnity. Developer agrees to Indemnify all Parties, and their respective Tracts, from and against any mechanics', materialmen's and/or laborer's liens, arising out of the maintenance performed by Developer in respect to the Common Area, pursuant to the provisions of this Article 10 (whether performed prior to or after the execution of this REA), and in the event that any Tract shall become subject to any such lien, Developer shall at the request of any Party promptly comply with the provisions of Clauses A or B of Section 9.6 hereof.

Section 10.5 Parking Regulations. Unless all Parties otherwise consent, each in its sole and absolute discretion, no charge of any type shall be made to or collected from any Permittees for parking, or for the right to park vehicles in the Automobile Parking Area, except such Exterior Common Area Maintenance Cost as may be provided for in any agreement with any Occupant. Permittees shall not be prohibited or prevented from so parking so long as space is available in the Automobile Parking Area and such Permittees do not violate the reasonable rules and regulations covering the use of the Automobile Parking Area promulgated from time to time by the Parties. The Parties may, by mutual agreement, prescribe certain sections within the Automobile Parking Area, or on other land outside the Shopping Center within a reasonable distance from the nearest boundary of the Shopping Center, for use as parking space by the Occupants of the Shopping Center, and by the employees, tenants, subtenants, agents, contractors, subcontractors, licensees and concessionaires of such Party and of such Occupants. In the absence of such mutual agreement, each Party shall provide parking on its Tract for its Occupants and the employess, tenants, subtenants, agents, contractors, subcontractors, licensees and concessionaires of such Party and of such Occupants. Each Party shall require and use reasonable efforts to cause its Occupants and the employees,

tenants, subtenants, agents, contractors, subcontractors, licensees and concessionaires of such Party and of such Occupants to use only such sections as are shown on Exhibit B as "Employee Parking". Each Party may relocate the area for Employee Parking provided it obtains the approval of any Party, in its sole and absolute discretion, whose Store exterior wall front is within three hundred feet (300') of any proposed Employee Parking area. No Party shall use or permit the use of the Automobile Parking Area for any purpose other than parking and passage of pedestrians and vehicles unless specifically provided otherwise in this REA.

Section 10.6 Reimbursement. Notwithstanding any provision of this REA to the contrary, each Major shall pay to Developer on account of its Allocable Share or otherwise, as such Major's sole contribution to Exterior Common Area Maintenance Cost (unless it has withdrawn its Tract pursuant to Section 10.9) and/or on account of such Major's contribution to Enclosed Mall Operation and Maintenance Expense, the amount or amounts specified and at the times specified in its Allocable Share Agreement. Developer shall pay all Exterior Common Area Maintenance Costs and Enclosed Mall Operation and Maintenance Expense, with only a right of reimbursement from each of the Majors pursuant to the Allocable Share Agreements.

Section 10.7 Obligations of Contractors. Developer shall include in any contract awarded with respect to maintenance of the Common Area a clause recognizing a Party's right to perform certain duties or obligations respecting the Common Area, as more particularly provided in Section 10.8, and a clause recognizing each Major's right to withdraw the Common Area on its Tract from the maintenance and operation by Developer, as more particularly provided in Section 10.9.

Section 10.8 Failure of Performance. If any Party fails to perform any of its duties or obligations respecting the Common Area provided in this Article 10, any other Party may at any time give a written notice to the Party thus failing, setting forth the specific non-performance. If such non-performance is not corrected

within thirty (30) days after receipt of such notice, or if such non-performance is such that it cannot be corrected within such time, if the non-performing Party fails to commence the performance of its duties within such thirty (30) day period and diligently to prosecute the same thereafter, then, in either such event, the Party giving such notice shall have the right to perform same in accordance with the REA standards, including, without limitation, the right and temporary non-exclusive easement to enter upon the Common Areas on any Tract to perform same, and such Party which has failed to perform shall pay the performing Party's reasonable costs thereof. Any amounts so expended may be withheld from amounts payable to any such non-performing Party pursuant to this Article 10 (or any Allocable Share Agreement) or collection may be sought otherwise and in any event such non-performing Party shall pay such amount with interest pursuant to Section 28.11; provided, however, these provisions shall be without prejudice to the rights of any such non-performing Party to contest the right of the other Party to make such repairs or to expend such monies or to withhold such amounts and to exercise any other rights or remedies available to the performing Party at law or in equity, under this REA or otherwise. Notwithstanding anything hereinabove or elsewhere contained to the contrary, (A) in the event of any emergency situation, a Party may without the notice required above, but with such notice to the non-performing Party as is reasonable under the circumstances, and without being required to withdraw its Tract as provided in Section 10.9, cure any such failure to perform and, thereafter, shall be entitled to the benefits of this Section 10.8, (B) no Party shall have the right, whether under this Section or otherwise, to enter upon the Floor Area or the Store of any other Party for any purpose in connection with this Section 10.8, and (C) no Major shall have the right to take over, assume or perform Developer's obligations with respect to the Enclosed Mall, including without limitation, furnishing of heating, ventilating and air conditioning for the Enclosed Mall. If any Party undertakes to perform any obligation on behalf of any non-performing Party,

such performing Party shall (i) perform such duties or obligations in the same manner and to the same standard required of the non-performing Party by this REA and (ii) Indemnify the other Parties (except the non-performing Party) in connection with such work.

Section 10.9 Withdrawal of Tract; Reappointment of Developer.

A. Each Major shall have the right, in its sole discretion and without cause, upon not less than sixty (60) days' prior written notice given to Developer (with a copy to each of the other Majors), to withdraw the Common Area on its Tract from the maintenance and Operation by Developer as in this Article 10 provided for, such withdrawal to be effective only as of the first day of the next Accounting Period quarter following such sixty (60) day notice period. Any such withdrawal pursuant to this subsection A or subsection F of this Section 10.9 shall not affect the agreements hereinabove provided with respect to the other Parties not so terminating such arrangements with Developer, and such other Parties shall continue to be obligated to pay their respective contributions pursuant to their Allocable Share Agreements. The Major so withdrawing its Tract from the provisions of such agreements agrees that, effective upon its withdrawal of its Tract, it will perform and assume all of the maintenance and Operations obligations of Developer under this REA with respect to its Tract, including those specified in Section 10.2, and pay all costs and expenses in connection with the Operation and maintenance of the Common Area on its Tract, excepting, however, costs and expenses incurred by Developer prior to the effective date of such withdrawal and excepting as otherwise provided in this Section 10.9.

B. (1) In the event a Major withdraws its Tract as provided in subsection A or F of this Section 10.9, the Parties shall cooperate with each other and use reasonable efforts to maintain in effect a single policy of liability insurance on all of the Common Area in the Shopping Center as required by Section 11.3, to the extent such single policy of liability insurance is then available, and, if the Parties are able to maintain such a single policy of

liability insurance, Developer shall pay for the same, subject to reimbursement therefor by the Majors (including the withdrawing Major), in the manner and to the extent provided in their respective Allocable Share Agreements.

(2) In the event a Major withdraws its Tract as provided in subsection A or F of this Section 10.9, and the Parties are unable to maintain a single policy of liability insurance on all of the Common Area in the Shopping Center, then, in that event, the withdrawing Major hereby agrees to undertake at its sole cost and expense the Indemnity and insurance obligations of Developer as set forth in Sections 11.1, 11.3 and 11.4 as respects the withdrawing Major's Tract [it being agreed that, in contrast to Developer, a withdrawing Major may self-insure the obligations provided to be insured pursuant to Section 11.3 below, if such withdrawing Major (or its Guarantor as defined in Section 11.5 below) qualifies therefor under the terms of this REA], excepting, however, claims arising from acts, omissions or occurrences which occurred prior to the effective date of such withdrawal and excepting as otherwise provided in subsection H below relative to certain maintenance and services for which Developer shall retain responsibility.

C. Developer shall refund to any Major so withdrawing its Tract from the maintenance and Operation provisions hereof the full amount of any payments made by it to Developer as its share of the cost of maintenance and Operation of the Common Area covering a period of time subsequent to the effective date of such withdrawal. Payment of such amounts shall be made to the withdrawing Major by Developer within thirty (30) days of the effective date of such withdrawal. A Major withdrawing its Tract pursuant to this Section 10.9 shall have no further obligation to pay Developer such Major's Allocable Share of Exterior Common Area Maintenance Cost, except as otherwise hereinafter provided in Subsection H.

D. In the event a Major withdraws its Tract as provided in subsection A or F of this Section 10.9, and subsequently desires that Developer reassume the maintenance and Operation obligations for such Major's Tract, then, such Major shall (1) give Developer

not less than ninety (90) days' written notice of such desire, such notice to be effective at the beginning of the next succeeding Accounting Period quarter except as hereafter provided in this paragraph, and (2) place the Common Area on its Tract in substantially the same condition as then exists for the balance of the Common Area in the Shopping Center as a prior condition to causing Developer to Operate and maintain the Common Area on such Major's Tract. Concurrently with such resumption, such Major shall resume performance of its obligations under Section 10.6, and shall be released of its obligations contained above in this Section 10.9, except for claims arising from acts, omissions or occurrences which occurred during the withdrawal period. In the event a Major withdraws its Tract without cause as hereinabove provided in subsection A and subsequently desires that Developer reassume the maintenance and Operation obligations for such Major's Tract, then, such Major shall give Developer notice of such desire, and Developer shall reassume the obligations on the first day of the fourth month following the month in which the notice is given if notice is given between January 1 and May 1, and if notice is given subsequent to May 1 of any year, Developer shall reassume the obligations on April 1 of the following year. Notwithstanding the foregoing, in the event of a withdrawal by a Major of its Tract, as provided for in subsection A of this Section 10.9 and excluding a withdrawal by a Major of its Tract as provided in subsection F of this Section 10.9, Developer shall not be required to reassume maintenance or Operation obligations within two (2) years of any withdrawal unless such Major shall agree to thereafter reimburse Developer such Major's pro rata share of all expenses of such maintenance incurred by Developer from and after the date on which Developer will reassume such maintenance and Operation obligations.

E. In the event that a Major withdraws its Tract as provided in subsection A above and thereafter, in accordance with subsection D above, requires Developer to reassume the obligations of maintenance and Operation relative to such Major's Tract, such Major shall have no right again to withdraw the Common Area located

on its Tract pursuant to subsection A above until the expiration of three (3) years from the resumption of performance of such obligations by Developer, and then only upon fulfillment by such Major of all other conditions thereto required under this Section 10.9. Nothing contained in this subsection E shall limit or restrict the right of any Major to withdraw its Tract from maintenance and Operation by Developer, whenever and as often as it deems appropriate, in accordance with the terms of and as provided in subsections A and F below.

F. In addition to the rights provided in the first sentence of subsection A above, each Major shall also have the right to withdraw the Common Area on its Tract from the maintenance and Operation by Developer at any time if (1) Developer has defaulted with respect to such Major's Tract in its maintenance and Operation requirements pursuant to this Article 10, (2) such default is either (i) material or (ii) a continuing or recurring immaterial default, and (3) Developer has not cured such default within thirty (30) days, after such Major shall have given notice of such default to Developer (or within such longer period as may be necessary to cure such default if it is not practicable to cure the default within such thirty (30) day period provided Developer commences a cure within such thirty (30) day period and diligently and expeditiously pursues it to completion). If Developer fails to cure such default within the period of time set forth above or promptly if an emergency, such Major shall have the right (but not the obligation) to cure such default and bill Developer for the reasonable costs and expenses incurred to cure such default. If Developer fails to reimburse the Major for such costs and expenses or to pay any amounts due pursuant to the last sentence of subsection C above, such Major may offset such costs and expenses or amounts from any sums due Developer hereunder or under its Allocable Share Agreement.

G. Notwithstanding anything to the contrary contained herein, no Major shall have any right or option whatsoever to

perform or take over the repair, maintenance and Operation of the Enclosed Mall, or any part thereof.

H. In the event that any Major elects to withdraw the Common Area on its Tract from the maintenance and Operation by Developer, such Major nevertheless shall continue (1) to pay to Developer the annual amount set forth in its Allocable Share Agreement as its contribution toward the Enclosed Mall Maintenance and Operation Expense, (2) to reimburse Developer for such Major's Allocable Share of the cost of electrical service furnished by Developer, if any, for lighting of the Automobile Parking Area on each Tract, and (3) to reimburse Developer for such Major's Allocable Share of the cost of Operating the Common Utility Lines and the cost of providing security personnel in and upon the exterior Common Areas upon the Shopping Center Site. Developer shall continue to furnish such maintenance and services referred to in clauses (1), (2) and (3) of this subsection H. Developer's Indemnity pursuant to Section 11.1 shall continue in effect with respect to such maintenance and services and the withdrawing Major shall have no obligation to perform any such maintenance or services. Such Major's share of the cost of the maintenance and services referred to in clauses (2) and (3) shall be the amount calculated by dividing the amount which would be due from such Major under its Allocable Share Agreement for all Exterior Common Area Maintenance Cost by the costs for all Exterior Common Area Maintenance Cost, and then multiplying said amount by the costs for such maintenance and services.

I. If any Party undertakes to perform any obligation on behalf of any non-performing Party, such performing Party shall (i) perform such duties or obligations in the same manner and to the same standard required of the non-performing Party by this REA and (ii) Indemnify the other Parties (except the non-performing Party) in connection with such work.

Section 10.10 Perimeter Sidewalks - Landscaping. The replacing, repairing or maintaining of the landscaping, planter boxes, landscape irrigation system (if any) and landscape drainage

systems shall be performed by each Major, at its expense, for a period of one (1) year after installation, and thereafter, shall be included within Exterior Common Area Maintenance Costs and shall be performed by Developer. Said items within Perimeter Sidewalks shall be installed and constructed by and at the sole cost and expense of the Party upon whose Tract the same may exist from time to time.

Section 10.11 Rules and Regulations. Each Party severally agrees to observe and comply with, and shall use reasonable efforts (including, if necessary, the filing of suit and reasonable expenditure of funds) to cause its Permittees to observe and comply with, such rules and regulations related to the Shopping Center as may be adopted from time to time by the mutual agreement of the Parties. The Parties hereby adopt the rules and regulations attached hereto and marked Exhibit E, until such time as new and different rules and regulations shall be adopted, as aforesaid. An amendment of such rules and regulations shall not be deemed to be, nor shall it require, an amendment to this REA for purposes of Section 26.1.

ARTICLE 11

INDEMNIFICATION AND PUBLIC LIABILITY INSURANCE

Section 11.1 Indemnity - Common Area. Subject to Section 10.9, Developer covenants to Indemnify each other Party against all claims (including, without limitation, any action, manner of action or proceeding brought thereon), costs, expenses and liabilities attributable to the death of or any accident, injury (personal or bodily), loss or damage whatsoever actually or claimed to be suffered or sustained by any Person, or to the property of any Person (in this Article 11 and in Article 12, such claims, costs, expenses and liabilities are collectively referred to as "Loss"), as shall occur in or about the Common Area, actually or claimed to be caused in whole or in part by the negligence of Developer, its contractors, subcontractors, and its or their agents or employees so long as Developer is responsible for the maintenance and

Operation of that portion of the Common Area upon which such Loss occurred; provided, however, that a Party shall not be entitled to such Indemnification to the extent (as determined by the laws of the State of New Mexico relating to contributory negligence) that any such Loss is caused by reason of such Party's negligence or is caused in whole or in part by reason of its willful, intentional or wanton acts or omissions.

Section 11.2 Indemnity - Tracts. Each Party, severally, covenants to Indemnify each of the other Parties against all Loss, as shall occur on its Tract, except for claims (A) (1) required to be Indemnified against by Developer as provided for in Section 11.1 hereof, or (2) insured against by the insurance referred to in Section 11.3 hereof, and (B) as to any Party seeking Indemnification, to the extent (as determined by the laws of the State of New Mexico relating to contributory negligence) that any such Loss is caused by reason of the negligence or is caused in whole or in part by reason of the willful, intentional or wanton acts or omissions of the Party seeking Indemnification.

Section 11.3 Developer's Liability Insurance - Common Area. Subject to Section 10.9, Developer shall, during the Term of this REA, maintain, or cause to be maintained, in full force and effect, with a financially responsible insurance company or companies, with a Best rating of A-IX or better in each of the previous three (3) years (provided that if Developer's existing insurance company is reassessed with a Best rating of less than A-IX, then Developer shall use diligent efforts to obtain such insurance with a company with a Best's rating of A-IX and in no event shall the company's rating be less than A-VIII), comprehensive general liability insurance written on an occurrence basis covering claims of Loss from products and completed operations, contractual liability (including without limitation coverage of the Indemnities under this REA), bodily injury including death, personal injury and broad-form property damage arising out of accidents or incidents occurring within the Common Area or on the Shopping Center Site (including the consequential damages stemming from any or all for

the foregoing), with a combined single limit in the amount of not less than $5,000,000 per occurrence or such other amount as the Parties may jointly agree upon from time to time. Said limits may be provided through a combination of primary and excess (umbrella) liability policies. Developer shall furnish to the other Parties, on or before the effective date of any such policy and at each renewal thereof, a certificate of insurance evidencing that the insurance referred to in this Section 11.3 is in full force and effect and that the premiums therefor have been paid. Such insurance shall provide coverage which is primary to any policies of the other Parties for any Loss occurring on or about the Common Area, shall expressly insure the Indemnity of any Party contained in Section 11.1, shall name the other Parties as additional insureds thereunder and shall provide that the same may not be cancelled or amended without at least thirty (30) days prior written notice being given by the insurer to the other Parties. Any insurance carried by a Major with respect to the Common Areas on its Tract shall be "excess" and "non contributing" with respect to any Loss occurring on or about the Common Area.

Section 11.4 Liability Insurance - Tracts (Excluding Common Area). Each Party shall, severally, at all times during the Term of this REA, maintain in full force and effect comprehensive general liability insurance with a financially responsible insurance company or companies with a Best rating of A-IX or better in each of the previous three (3) years (provided that if a Party's existing insurance company is reassessed with a Best rating of less than A-IX, then such Party shall use diligent efforts to obtain such insurance with a company with a Best rating of A-IX and in no event shall the company's rating be less than A-VIII), written on an occurrence basis covering claims of Loss from products and completed operations, contractual liability, (including without limitation, coverage of the Indemnities under this REA), bodily injury including death, personal injury and broad-form property damage (including the consequential damages stemming from any and all of the foregoing) arising out of incidents or accidents on its

Tract, excluding the Common Area, with a combined single limit in an amount not less than $5,000,000 per occurrence or such other amount as the Parties may jointly agree upon from time to time, with a deductible amount of not more than $25,000 (unless such Party otherwise satisfies the requirements for self-insurance in Section 11.5). Said limits may be provided through a combination of primary and excess (umbrella) liability policies. All insurance shall be "primary" with respect to each Party's Tract and shall name the other Parties as additional insureds to the extent of the Indemnity given by each Party pursuant to Section 11.2. Any insurance carried by a Major with respect to its Tract shall be "excess" and "non contributing" with respect to Loss occurring on or about any other Party's Tract and on or about the Common Area, and shall provide that the same may not be canceled or amended without at least thirty (30) days prior written notice being given by the insurer to the other Parties.

Section 11.5 Blanket Insurance, Self-Insurance and Certificates. The insurance described in Sections 11.3 and 11.4 may be carried in whole or in part under a policy or policies covering other liabilities and locations of the Parties, or a subsidiary, successor, affiliate or controlling corporation of such Parties; provided, however, that (A) any such blanket insurance policy or policies insures the risks and the full amounts required by this REA and (B) the inclusion of additional coverage or risks shall not materially diminish the coverage or insurance proceeds available under said policy or policies. The insurance requirements referred to in Sections 11.3 (but only as to any Major which has withdrawn pursuant to Section 10.9 and not as to Developer) and 11.4 may be satisfied in whole or in part under any plan of self-insurance from time to time maintained by any Party, on the condition that upon request by any Party, the Party so self-insuring [together with the guarantor of such Party executing a Guaranty contemporaneous with the execution of this REA (the "Guarantor")] shall give a statement to the other Parties of such self-insurance, and has and maintains a minimum net worth of

$100,000,000 and a minimum net current assets of $50,000,000, and that any Party (or its Guarantor) so self-insuring shall furnish to any other Party requesting the same evidence of such Party's net worth and net current assets. The financial statements or annual reports of any such Party (or its Guarantor), audited by an independent certified public accountant doing business on a national basis, shall be sufficient evidence of its net worth and net current assets. Each Party which has elected not to self-insure as permitted in this Section shall severally furnish to any other Party requesting the same evidence that the insurance referred to in Sections 11.3 and 11.4 is in full force and effect. All policies of insurance carried by any Party pursuant to this Article 11, or endorsements issued under any blanket policy or policies covering those liabilities required to be insured against by this Article 11, shall provide that the same may not be canceled or reduced in scope or amount below that required hereunder without at least thirty (30) days prior written notice being given by the insurer to each of the other Parties. If any Party is qualified to and elects to self-insure pursuant to the provisions of this Section 11.5 and thereafter elects not to self-insure, it shall give at least thirty (30) days prior written notice to each of the other Parties.

Section 11.6 Rating Services. All references in this Article 11 and Article 12 to the "Best rating" applicable to a particular company shall refer to the rating assigned to such company by A M Best Company ("Best") most current Key Rating guide. In the event Best no longer publishes its ratings, the rating required under Articles 11 and 12 shall be the rating of another reputable insurance company rating service approved by all of the Parties that most closely approximates (in quality and financial security) the Best rating required hereunder.

ARTICLE 12

PROPERTY AND EXTENDED COVERAGE INSURANCE

Section 12.1 Developer - All Risks Insurance. Effective upon the commencement of construction of Developer Improvements, and continuing until Developer is no longer Operating or required to Operate or required to restore the Developer Improvements under Section 13.3, whichever is later, Developer, as respects the Developer Improvements and for the term of the REA as respects the Common Areas on the Shopping Center Tract, covenants with the Majors that it will carry or cause to be carried, all risk property insurance coverage, including builder's risk insurance coverage during construction and, upon completion of construction, an "all-risk" insurance policy covering physical loss or damage to the property written on a replacement cost basis, in an amount at least equal to one hundred percent (100%) of the replacement cost (exclusive of the cost of excavation, foundations and footings) without deduction for depreciation of the Developer Improvements or Common Areas being insured, insuring against "all risks" (subject to exclusion of certain risks customarily excluded from time to time in the so-called "all risk" coverage policy), and insuring specifically against at least the following perils: loss or damage by fire, lightning, windstorm, cyclone, tornado, hail, explosion, earthquake (with no more than a 10% deductible), subsidence, flood, riot, water damage other than flood or sprinkler leakage, riot attending a strike, civil commotion, malicious mischief, vandalism, collapse of building or roof, boiler and machinery equipment, aircraft, vehicle and smoke damage and sprinkler leakage. The requirement to maintain earthquake coverage shall be contingent upon the reasonable commercial availability of such coverage. Such insurance shall be carried with financially responsible insurance companies authorized to do business in the State of New Mexico with a Best rating of A-IX or better in each of the previous three (3) years.

Developer agrees that such policies shall contain a provision that the same may not be canceled or amended to reduce the

applicable coverage below the requirements of this REA without at least thirty (30) days' prior written notice being given by the insurer to each of the Majors.

Section 12.2 Majors - All Risks Insurance. Each Major, as respects its respective Store, severally covenants with each other Party, that it will carry, during the period it is required to Operate pursuant to Section 21.1, all risk property insurance coverage including builder's risk insurance coverage during construction, in an amount at least equal to one hundred percent (100%) of the replacement cost (exclusive of the cost of excavation, foundations and footings) without deduction for depreciation of such Major's Store (subject to exclusion of certain risks customarily excluded from time to time in the so-called "all risk" coverage policy) and insuring specifically against at least the following perils: loss or damage by fire, lightning, windstorm, cyclone, tornado, hail, explosion, earthquake (with no more than a 10% deductible), subsidence, flood, water damage other than flood or sprinkler damage, riot, riot attending a strike, civil commotion, malicious mischief, vandalism, collapse of building or roof, boiler and machinery equipment, aircraft, vehicle and smoke damage and sprinkler leakage. The requirement to maintain earthquake coverage shall be contingent upon the reasonable commercial availability of such coverage. Such insurance shall be carried with financially responsible insurance companies authorized to do business in the State of New Mexico with a Best rating of A-IX or better in each of the previous three (3) years. Each Major agrees that its aforesaid policy shall contain a provision that the same may not be canceled or amended to reduce the applicable coverage below the requirements of this REA without at least thirty (30) days' prior notice being given by the insurer to the other Parties.

Section 12.3 Blanket Insurance and Self-Insurance. Any insurance required to be carried pursuant to Section 12.1 or Section 12.2 may be carried in whole or in part under a policy or policies covering other liabilities and locations of the Parties,

or a subsidiary, successor, affiliate or controlling corporation of such Parties; provided, however, that (A) such policy or policies of any Party shall insure the risks and full amounts required under this REA, (B) the inclusion of additional coverage or risks shall not materially diminish the coverage or insurance proceeds available under said policy or policies, and (C) such policy or policies shall contain, permit or otherwise unconditionally authorize the waiver granted in Section 12.4.

Notwithstanding anything to the contrary contained in this Article 12, the insurance requirements hereinbefore in this Article 12 referred to may be satisfied in whole or in part under any plan of self-insurance from time to time maintained by any Party, provided the Party so self-insuring (together with its Guarantor so long as such Guarantor guarantees the reconstruction obligations of such Party for its Store) shall give a statement to the other Parties of such self-insurance and has and maintains adequate net worth and net current assets or net worth for the risks so self-insured, and that any Party (or its Guarantor) so self-insuring shall furnish to any other Party requesting the same evidence of the adequacy of such Party's said net worth and net current assets (either a net worth of $100,000,000 and net current assets of $50,000,000 or a net worth of $200,000,000, and no less than those amounts shall be adequate for the purposes of this Article). The most recent financial statement or annual report of any such Party (or its Guarantor) audited by an independent certified public accountant doing business on a national basis, shall be sufficient evidence of its net worth and net current assets. If any Party is qualified to and elects to self-insure pursuant to the provisions of this Article 12 and thereafter elects not to self-insure, it shall give at least thirty (30) days' prior written notice thereof to each of the other Parties.

Section 12.4 Mutual Release; Waiver of Subrogation. Each Party hereby releases and waives for itself, and to the extent legally possible for it to do so, on behalf of its insurer, each of the other Parties and their officers, directors, agents, partners,

servants and employees from any liability for any loss or damage to any or all property located upon the Shopping Center Site, including, without limitation, any resulting loss of rents or profits of the releasing Party, and of any Occupant claiming its right of occupancy by or through such releasing Party, which loss or damage is of the type covered by the property insurance required to be maintained by it under this Article 12, irrespective of any negligence on the part of the released Persons which may have contributed to or caused such loss or damage; provided, however, that, as to any such Occupant, such Occupant has released the Majors and obtained for the benefit of each Major the waiver of subrogation described in Section 12.6. Each Party covenants that it will, if generally obtainable in the industry, obtain for the benefit of each such released Person a waiver of any right of subrogation which the insurer of such Person may acquire against any such Person by virtue of the payment of any such loss covered by such insurance. This release and 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 to the extent required by this Article 12. Any Party that fails to obtain a waiver of subrogation from its insurer must so notify the other Parties of the fact in writing, and during such time that the Party has not obtained such waiver, the provisions of Section 12.4 concerning the provisions of waivers of subrogation by other Parties are void as to that Party.

Section 12.5 Certificate of Insurance. Unless a Party has the right and has elected to self-insure, each Party shall, upon execution of this REA and thereafter before the expiration of each policy, promptly furnish, upon request, the other Parties a certificate evidencing the furnishing Party's compliance with the insurance coverage requirements of this Article. No Party shall be required during any given 180-day period to honor more than one such request from each other Party, except as to replacement or renewal policies.

Section 12.6 Occupants' Insurance. Developer covenants to and with the Majors that it will, to the extent it is legally possible for its Occupants to do so, require each Occupant of any Developer Improvements to obtain for the benefit of the Majors a waiver of any right of subrogation which the insurer of any such Occupant may acquire against any Major by virtue of any Loss or any loss or damage of the nature specified in Section 12.4. Each of the Majors covenants to and with Developer that it will, to the extent that it is legally possible for its tenants to do so, require each such tenant to obtain for the benefit of Developer and all other Majors, a waiver of any right of subrogation which the insurer of any such tenant may acquire against Developer and all other Majors by virtue of any Loss or any loss or damage of the nature specified in Section 12.4. The provisions of this Section 12.6 are in addition to, and not in limitation of, the release and waiver given by Developer and the Majors pursuant to Section 12.4 hereof.

Section 12.7 Insurance Trustee. In every case of loss or damage to the Developer Improvements or to a Major's Store, all proceeds of such insurance (excluding the proceeds of any rental value or use and occupancy insurance) shall be used with all reasonable diligence by the Party whose Tract has been damaged for rebuilding, repairing or otherwise reconstructing the same, to the extent required to be reconstructed pursuant to the provisions of Article 13, or if not so required, to the clearing and improving as Common Area in accordance with Article 13.

Unless the applicable Party is then qualified to self-insure pursuant to Section 12.3, in case of any loss which exceeds $1,000,000, the amount of any recovery in excess of $1 000,000 in insurance proceeds shall be paid in trust to the Mortgagee of the Party's Tract or to such national bank or trust company qualified under the laws of the State of New Mexico and approved by the other Parties as the Party shall designate for the custody and disposition as herein provided. The trustee's fees shall be paid by the insured. If a Mortgagee is the trustee of such insurance

funds, such funds shall be deposited in a national bank in the State of New Mexico.

Payment of the proceeds shall be made by the trustee of the funds to the Party whose Tract has been damaged, or to its contractor or contractors, in the discretion of the trustee, as follows:

A. At the end of each month, or from time to time, as may be determined by the trustee, an amount equal to ninety percent (90%) of the amount of the verified request for payment(s) made by the contractor(s) or materialmen for work done, material supplied and services rendered during each month or other period; provided that the Party's independent licensed architect provides a certificate that the work has been completed in substantial accordance with the approved plans and specifications for which payment is being requested, and provided, further, that the amount necessary for the reconstruction or repair in excess of the amount received upon the insurance policies has first been provided by the Party for such purposes and its application for such purposes assured.

B. At the completion of the work, the balance of such proceeds required to complete the payment of such work shall be paid to the Party, or to its contractor or contractors as the trustee deems appropriate, provided that at the time of such payment (1) there are no liens against the property by reason of such work, and with respect to the time of payment of any balance remaining to be paid at the completion of the work the period within which a lien may be filed has expired, or proof has been submitted that all costs of work theretofore incurred have been paid or bonded, and (2) the Party's architect shall certify that all required work is completed and proper and of a quality and class equal to or better than the original work required by this REA and in substantial accordance with the approved plans and specifications.

C. Any funds not required to rebuild or raze and clear or rebuild Common Area under Article 13, shall be paid by the trustee to the Party, or to its Mortgagee, as their interests may appear.

ARTICLE 13

COVENANTS AS TO REPAIR, MAINTENANCE, ALTERATIONS AND RESTORATION

Section 13.1 Maintenance. Each Party shall keep and maintain, or cause to be kept and maintained (unless it shall be relieved from the obligations so to do as herein provided) in good order, condition and repair and in compliance with all laws, codes, orders and regulations, all completed portions of its respective Store and Developer shall keep and maintain or cause to be kept and maintained (unless it shall be relieved from the obligations so to do as herein provided) in good order, condition and repair and in compliance with all laws, codes, orders and regulations all completed portions of the Developer Improvements and the Common Areas.

Section 13.2 Restoration of Common Area. Developer covenants that in the event of any casualty required to be insured against hereunder which results in damage or destruction to the Common Area (excluding the Enclosed Mall), whether insured or uninsured, it shall, at its sole cost and expense, restore, repair or rebuild such Common Area with all due diligence. Such restoration and repair shall be performed in accordance with the applicable requirements of Section 13.5 hereof.

Section 13.3 Restoration of Developer Mall Stores or Enclosed Mall. Developer covenants to and with the Majors, each severally, that, in the event of any damage to or destruction of all or any portion of the Developer Mall Stores or the Enclosed Mall resulting from a casualty required to be insured against hereunder (whether insured or uninsured):

(A) In the event such damage or destruction occurs prior to the expiration of the period in which Operation by a Major is required pursuant to Section 21.1, provided either (1) that at least three (3) of the Majors are Operating each in accordance with its Operating covenant contained in Section 21.1 hereof, and such Majors are not in default thereunder beyond the applicable grace period for the curing set forth in Section 21.2(c), Developer shall

at its own expense, and with all due diligence, restore, repair or rebuild the Developer Mall Stores to at least the Minimum Floor Area and restore, repair or rebuild the Enclosed Mall in its entirety, or (2) that only two (2) of the Majors are Operating each in accordance with its Operating covenant contained in Section 21.1 hereof, and such Major is not in default thereunder beyond the applicable grace period for the curing set forth in Section 21.2(c), Developer shall at its own expense, and with all due diligence, restore, repair or rebuild the Developer Mall Stores to at least 200,000 square feet of Floor Area and repair, restore or rebuild the Enclosed Mall Immediately Adjacent (as hereinafter defined) to such two Majors; or (3) that only one (1) of the Majors is Operating in accordance with its Operating covenant contained in Section 21.1 hereof and such Major is not in default thereunder beyond the applicable grace period for the curing thereof, Developer shall at its own expense, and with all due diligence, restore, repair or rebuild the Developer Mall Stores to at least 100,000 square feet of Floor Area and a corresponding portion of the Enclosed Mall Immediately Adjacent to such one (1) Major. For purposes of this subparagraph (A), a Major which is Operating but is not required to do so pursuant to Section 21.1 below shall be considered a Major Operating pursuant to Section 21.1 if such Major's Store is not damaged or destroyed by the applicable casualty or, if so damaged or destroyed, such Major confirms in writing an obligation to Operate its Store during its Operating Period in accordance with Section 21.1. This subparagraph (A) shall apply only if the damage or destruction is required to be insured against hereunder, regardless of the cause of such damage or destruction and regardless of whether such damage or destruction was insured or uninsured; and

(B) In the event such damage or destruction occurs after the period referred to in subsection (A) above and the cost of such restoration, repair or rebuilding is more than ten percent (10%) of the then replacement cost of the Developer Improvements (hereinafter referred to as "Substantial Damage or Destruction" in

this Section 13.3), Developer shall have no obligation to restore, repair or rebuild the Developer Mall Stores or the Enclosed Mall except as provided below. Promptly following any such Substantial Damage or Destruction, Developer shall request in writing of all of the Majors that they agree to extend their respective obligations to Operate in their respective Stores hereunder for a period of ten (10) years commencing on the earlier of (a) the date of completion of such restoration, repair or rebuilding, or (b) eighteen (18) months after the date of such Substantial Damage or Destruction, and, if within sixty (60) days after such request is made at least one (1) Major covenants in writing with Developer (in recordable form if requested) to Operate for such ten (10) year period in its Store and otherwise as herein provided in Article 21, Developer shall at its own expense and with all due diligence, restore, repair and rebuild that portion of the Developer Mall Stores and Enclosed Mall hereinafter specified, provided that such Major(s) so agreeing to extend also shall have commenced restoration, repair and rebuilding of its Store(s) in the event of any damage or destruction thereto as hereinafter provided in Section 13.4 hereof. If Developer receives such extended Operating covenants from any of the Majors, the obligation of Developer for restoration of the Developer Mall Stores and the Enclosed Mall shall be to restore, repair or rebuild with all due diligence as follows: (1) if three (3) or more of the Majors so extend their respective Operating covenants, the obligation of Developer for such restoration shall be to restore, repair and rebuild the Minimum Floor Area of the Developer Mall Stores reasonably evenly distributed on each level and the Enclosed Mall in its entirety; or (2) if two (2) of the Majors so extend their respective Operating covenants, the obligation of Developer for such restoration shall be to restore, repair and rebuild the Minimum Floor Area of the Developer Mall Stores and the Enclosed Mall Immediately Adjacent to such two (2) Majors; or (3) if one (1) of the Majors so extends its Operating covenant, the obligation of Developer for such restoration shall extend to the Developer Mall Stores and the Enclosed Mall

Immediately Adjacent to such one (1) Major. Such restoration shall include leveling, paving, creation of proper exterior walls for what previously constituted common party walls, and the creation of a useful entrance and exit which is approved by the Major or Majors, with proper ingress to and egress from the Enclosed Mall and Automobile Parking Area.

In the event such damage or destruction does not constitute Substantial Damage or Destruction, Developer, at its expense and with all due diligence, shall restore, repair or rebuild the Developer Mall Stores and the Enclosed Mall.

"Immediately Adjacent" as used in this REA means that portion of the Developer Mall Stores, and that portion of the Enclosed Mall located on each level so as to form a single, unified and integrated unit connecting such Developer Mall Stores and Enclosed Mall portions and all Majors which are Operating or agree to extend their Operating Covenant (including the Center Court portion of each level of the Enclosed Mall, if applicable, which is located adjacent and in proximity to each such Major), all as more particularly shown on Exhibit B-1.

In the event Developer does not obtain the extended covenants referred to herein from at least one (1) of the Majors, Developer shall have the right to raze the whole or any part of the Developer Improvements so damaged or destroyed. If, after the Operating covenants of the Majors have expired or terminated, less than two (2) Majors have been Operating at all times during the preceding thirty-six (36) month period, then Developer shall also have the right to raze the whole or any part of the Developer Improvements which are not Immediately Adjacent to any Major(s) which have Operated at any time during such preceding thirty-six (36) month period. In such event, Developer shall cause the Enclosed Mall to be secured where the Developer Improvements have been removed so that the same shall remain enclosed and not permit the escaping of air.

All restoration, repair or rebuilding shall be performed in accordance with the applicable requirements of Section 13.5 and any

partial restoration, repair or rebuilding shall be in compliance with a revised site plan approved by the then Operating (or restoring and repairing) Major(s). The covenants contained in this Section 13.3 shall not be enforceable by a Major unless such Major is Operating pursuant to the provisions of Article 21 or Section 13.3 hereof or such Major is repairing, restoring or rebuilding its Store to be reopened and so Operated in any event.

Section 13.4 Restoration of Stores of Majors. Each of the Majors severally covenants with Developer that, in the event any damage or destruction to all or any portion of its Store occurs during the period in which Operation by a Major is required pursuant to Section 21.1 or Section 13.3B, it will cause its Store to be reconstructed to at least the Minimum Floor Area described in Section 8.1 hereof, and provided Developer complies with its obligation to reconstruct, if any, pursuant to Sections 13.2 and 13.3. The reconstructed Store shall, to the extent practicable, have the entrances in the same general location on the Enclosed Mall as existed before the damage or destruction. The covenants contained in this Section 13.4 shall not be enforceable by the Developer unless the Developer is Operating pursuant to the provisions of Article 20 , as the case may be, at the time of such damage or destruction. Developer hereby agrees that, in the event of damage or destruction to all or any part of a Major's Store, Developer shall use reasonable efforts to cause such Major to reconstruct and reopen its Store as required by this Section 13.4, which efforts shall not include the filing of any suit or complaint.

A Major may raze the whole or any part of its Store at any time during the Term hereof subsequent to the date upon which such Major's covenant to Operate its Store, pursuant to Article 21 or Section 13.3 hereof, is terminated or released; provided, however, that in such event the Major razing its Store shall cause the Enclosed Mall to be secured where its Store has been removed so that the same shall remain enclosed and not permit the escaping of

air, and shall cause the area demolished and not rebuilt to be improved as Common Area as provided in Section 13.7.

Each Major (the "Excused Major") shall be excused from the performance of its obligations set forth in this Section 13.4 for and during any period of time (A) there shall be a default in performance of the covenants of Developer as set forth in Section 13.2 or 13.3, or Article 20 hereof or (B) when the Excused Major shall be released from the performance of its obligations under Section 21.1 hereof pursuant to the provisions of Section 21.2.

Section 13.5 Standards of Construction. All restoration, repair, rebuilding, maintenance, alterations, additions or improvements (hereafter in this Section 13.5 collectively called "work") performed by any Party shall be performed in strict compliance with such of the following requirements as are applicable thereto, to-wit:

A. No such work shall be commenced unless the Party desiring to perform the same has in each instance complied with the appropriate provisions of this REA.

B. If the work is upon a structure which is adjacent to the Enclosed Mall or to a Major's Store, as the case may be, then, during the performance of the work, the structure being repaired or rebuilt shall be secured and temporarily enclosed so as not to permit the escaping of conditioned air, and upon completion shall have physical integration with the Enclosed Mall or Major's Store, as the case may be.

C. All work shall be performed in a good and workmanlike manner and shall strictly conform to and comply with:

(1) The plans and specifications therefor approved to the extent provided in Article 4;

(2) All applicable requirements of laws, codes, regulations, rules and underwriters; and

(3) To the extent applicable, the requirements of Articles 4, 5, 6, 7, 8 and 9 and Technical Specifications.

D. All such work shall be completed at the sole cost and expense (except as herein provided to the contrary) of the Party

performing the same, and with due diligence, but no later than eighteen (18) months after the damage or destruction requiring such work.

Section 13.6 Licenses for Reconstruction. Each Party is hereby granted a temporary license to use portions of the Common Area for the purposes of performing maintenance upon, and making repairs to, and/or making construction alterations, additions and improvements, and/or razing or replacing the whole or any part of the Common Area, the Developer Improvements and the Majors' Stores, respectively, as are permitted pursuant to this REA (the activities referred to in this Section 13.6 being hereafter in this Section 13.6 collectively referred to as "Construction") and for the purpose of obtaining access to permit such construction.

With respect to all purposes for which such license is exercised, the Party desiring to undertake the same shall submit, within a reasonable time prior to the commencement of any such Construction, to the Party of the Tract in question for its approval a plot plan of the Shopping Center on which such Party shall delineate those portions of the Common Area upon which such Party reasonably will exercise the license in connection with such Construction, and shall submit plans indicating the nature and extent of the Construction and a time schedule therefor. The Party upon whose Tract the same is to be performed shall, within thirty (30) days after receipt of such plot plan and information, notify such requesting Party whether it approves or disapproves of the location, timing and use. At all times during any Party's use of the portion of the Common Area, as aforesaid, such Party shall comply with the applicable requirements of Article 9 hereof and, upon cessation of such use, shall promptly restore the portions of the Common Area so used to the condition in which the same were prior to the time of commencement of such use, including, without limitation, the clearing of such area of all loose dirt, debris, equipment and construction materials. Such Party shall also restore, at its sole cost and expense, any portions of the Shopping Center which may have been damaged by the performance of such

Construction promptly upon the occurrence of such damage, and shall at all times during the period of any such Construction keep all portions of the Shopping Center, except the portions upon which said Construction is being performed, and except the portions of the Common Area being utilized by such Party pursuant to this Section 13.6, free from and unobstructed by any loose dirt, debris, equipment or construction materials related to such Construction.

Section 13.7 Clearing of Premises. Whenever any Party is permitted to raze and/or not obligated hereunder to restore, repair or rebuild any building that has been damaged or destroyed and elects not to do so, then, and in such event, such Party shall raze such building or such part thereof as has been so damaged or destroyed, and clear the premises of all debris and such Party shall not unreasonably interfere with or disturb the business being conducted by all other Parties on the Shopping Center Site. All ground areas not restored to use shall be at the expense of such Party leveled, cleared and improved with minimal landscaping, including, without limitation, grass or paved, in a manner which is compatible with the balance of the Common Area. Thereafter, said area shall become a portion of the Common Area and shall be maintained as such, until such time as said Party may elect to rebuild thereon.

Section 13.8 Liability of Mortgagee. Anything in this Article 13 to the contrary notwithstanding, every Mortgagee or any other Person acquiring an interest in any Tract by reason of foreclosure of a Mortgage or conveyance in lieu thereof or by reason of a termination of a lease for a Sale and Leaseback shall be subject to the restoration requirements provided in Section 13.2, and the requirement that insurance proceeds shall be utilized for reconstruction so required in Sections 13.2, 13.3 and 13.4; the remaining provisions of Sections 13.3 and 13.4 hereof shall be applicable to any Mortgagee or any other Person acquiring an interest in any Tract by reason of foreclosure of a Mortgage or conveyance in lieu thereof or by reason of a termination under the terms of a Sale and Leaseback only in the following instances :

A. Where any such Mortgagee or Person so acquires title, if Section 13.3 or 13.4 requires reconstruction, such Mortgagee or Person shall only be liable in accordance with the terms of this REA for the reconstruction of improvements damaged subsequent to such foreclosure sale, conveyance or termination of leaseback, provided, however, that where damage or destruction occurs prior to such foreclosure sale, conveyance or termination of leaseback and is caused by a peril included within the risks required to be insured under this REA, any such Mortgagee or Person shall, if Section 13.3 or 13.4 requires reconstruction, reconstruct the damaged improvements to the extent of the insurance proceeds payable therefor.

B. If such Mortgagee or Person so acquires title and is not required pursuant to subsection A above to restore, repair or rebuild any building that has been damaged or destroyed and elects not to do so, then such Mortgagee or Person shall raze such building or such part thereof that has been so damaged or destroyed, clear the premises of all debris, and improve said area at its expense as Common Area, as required by Section 13.7. Thereafter said area shall become a portion of the Common Area until such time as said Mortgagee or Person may elect to rebuild thereon. Should such Mortgagee or Person be permitted to raze and desire to raze only a portion of any such building, the remaining building must contain not less than the portion of the Minimum Floor Area for such building pursuant to Article 8 which the Major would have been required to rebuild.

Nothing contained in this Section 13.8 shall limit the rights of Majors to be released from their covenants to Operate as provided in Section 21.2 and/or to reconstruct as provided in Section 13.4 if there is not such limited performance of the provisions of Section 13.3 or 13.4 by such Mortgagee or Person; and nothing contained in this Section 13.8 shall be construed to release the Party, whose interest has been acquired by such Mortgagee or Person, of any of its obligations under this REA (including Sections 13.3 and 13.4).

ARTICLE 14

INTENTIONALLY OMITTED

ARTICLE 15

FORCE MAJEURE

Each Party shall be excused from performing any obligation or undertaking provided in this REA, except any obligations to pay any sums of money under the applicable provisions hereof (unless conditioned upon performance of an obligation or undertaking excused by this Article 15) and except as otherwise expressly provided herein, in the event, but only so long as and to the extent that the performance of any such obligation or undertaking is prevented or delayed or otherwise hindered by act of God, fire, earthquake, flood, explosion, action of the elements, war, invasion, insurrection, riot, mob violence, sabotage, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, action of labor unions, condemnation, requisition, laws, orders of governmental or civil or military or naval authorities, or any other cause, whether similar or dissimilar to the foregoing, not within the control of such Party (other than the lack or inability to procure monies to fulfill its commitments and obligations or undertakings provided in this REA), all of which are herein referred to collectively as "Force Majeure".

Notwithstanding any specific references in certain provisions or this REA to this Article 15, the absence of such specific reference in any other provision shall not be deemed to diminish or preclude the general applicability of this Article 15.

ARTICLE 16

CONDEMNATION

Section 16.1 Determination of Award. Any award for damages (the "Award"), whether the same shall be obtained by agreement prior to or during the time of any court action, or by judgment,

verdict or order, or by agreement after any such court action, resulting from a taking by exercise of right of eminent domain of the Shopping Center Site or any portion thereof, or resulting from a requisitioning thereof by military or other public authority for any purpose arising out of a temporary emergency or other temporary circumstances (hereinafter collectively referred to as "Condemnation"), shall be distributed among the Parties to this REA in accordance with the terms and conditions of this Article 16, notwithstanding any provision of any mortgage, judgment, verdict or order to the contrary. To the extent that the Condemnation Award includes a component identified as the undivided interest in the reciprocal easements created by the REA, such component shall be divided among the Parties according to the same ratio which the Floor Area of each Party's Building bears to the total Floor Area of the Shopping Center.

Section 16.2 Distribution of Proceeds of Award. If a Party exercises its right to terminate its Operating covenant as provided in Sections 16.4 and 16.5, such Party shall be entitled to the entire Award relating to its interest in and to its Tract. If a Party does not have a right to terminate its Operating covenant or does not elect to exercise such right, the following provision shall be applicable. The Award shall be paid promptly by the Party receiving same in trust to the Mortgagee of the Party's Tract or to such national bank or trust company approved by the Parties having an office in the State of New Mexico, as trustee, to be distributed (along with any interest thereon) among the Parties in accordance with the provisions of this Article 16. The Award shall be distributed by the trustee among the Parties as follows:

(A) If all or any portion of any Tract shall be condemned, the total Award, exclusive of any portion of the Award or other compensation paid for any Common Area (or deemed to be paid for any Common Area pursuant to subsection (C) of this Section 16.2), shall be paid to the Party owning such Tract so taken.

(B) If all or any portion of the Common Area shall be condemned, the portion of the Award paid for the Common Area (or deemed to be paid for the Common Area pursuant to subsection (C) of this Section 16.2) shall be distributed by the trustee in the following order of priority:

(1) To such Party or Parties owning the portion of the Shopping Center Site so taken for performing the restoration of the Common Area (after all Parties shall have approved complete plans and specifications for any substituted Common Area and the contract or contracts for the construction of such substituted Common Area), in progress payments during the progress of the restoration of the Common Area, and as payment of the balance of the Award held by the trustee after full payment for such restoration, as the case may be, to the extent the Award will permit, as follows: (a) at the end of each month, or from time to time as may be agreed upon by the affected Parties, against such Party's architect's certificates accompanied by lien waivers from all contractors and subcontractors and materialmen, an amount equal to ninety percent (90%) of the amount of the verified request for payment(s) made by the contractor(s) or materialmen for work done, material supplied and services rendered during each month or other period; provided that the Party's independent licensed architect provides a certificate that the work has been completed in accordance with the approved

plans and specifications for which payment is being requested, and (b) at the completion of the work, the balance of the Award monies required to complete the payment for such work; provided that at the time of each such payment in (a) or (b) (i) there are no liens against the property of such Party by reason of such work and that, with respect to the time of payment of any balance remaining to be paid at the completion of such work, the period within which a lien may be filed has expired or the other Parties hereto are satisfied by proof submitted by such Party that all costs of such work theretofore incurred have been paid, (ii) such Party's architect shall certify that all work so far done is proper and of a quality and class equal to or better than the original work required by this REA and in accordance with the plans and specifications, and (iii) such Party shall furnish to the trustee evidence satisfactory to said trustee that all previous advances have been devoted to defray the actual cost of such work up to the amount of such cost, or that such cost has actually been paid by such Party in the amount of all such previous advances. In no event shall the trustee be liable for any amount in excess of the net proceeds of the Award.

(2) Should (a) the cost of such work be less than the Award so held in trust, or (b) it not be possible to provide a

substituted Common Area, the Award or the balance of said Award shall be apportioned among the Parties in accordance with the value of their respective property interests in the Tract or Tracts so taken, it being the intent that severance damages shall be the sole compensable interest arising from the integration of the several Tracts into the Shopping Center, which shall accrue to Parties who do not have any other property interest in the Tract so taken, except the reciprocal easements and other interests created by this REA; provided, however, there is first distributed to all Parties any and all reasonable expenses or disbursements each such Party may have incurred or obligated itself for in connection with such condemnation proceedings.

Anything to the contrary in this Section 16.2 notwithstanding, if a Party is qualified to self insure pursuant to the provisions of Section 11.5, payment of such Party's portion of any Award relating to Common Area shall be made directly to such Party rather than to the trustee as hereinabove provided; provided that payment of any Award to Developer shall be held in trust by the holder of the Mortgage on Developer Tract for application under this Article 16. If the Developer's Mortgagee is the holder of such award, such award shall be deposited in a New Mexico bank. The fee of the trustee (other than Developer's Mortgagee) shall be a first charge on the Award.

(C) If only a portion of the Floor Area and Common Area on any Tract shall be condemned, and the condemning authority does not apportion the amount of the Award attributable to Floor Area and

Common Area, the Parties shall agree in good faith as to the manner of allocation of the Award as to Floor Area or Common Area.

Section 16.3 Unresolved Issues. Any issue which is not resolved by any judgment in the condemnation proceeding or supplemental determination therein shall be resolved among the Parties acting in good faith.

Section 16.4 Taking of Automobile Parking Area. If a portion of the Automobile Parking Area shall be so taken in Condemnation so that after such taking the number of parking spaces on any Party's Tract shall be reduced to less than eighty percent (80%) of the number of parking spaces required to satisfy the parking ratio applicable to such Tract under Section 10.3 hereof and Developer fails, within a reasonable period of time not to exceed 365 days, to provide substitute Automobile Parking Area acceptable to such Party in its sole discretion and to the other Majors, then this REA may be terminated by the Major whose Tract is so affected or by any or all of the Majors if the Developer is the terminating Party.

Section 16.5 Partial Taking of Floor Area and Automobile Parking Area. If ten percent (10%) or more of the Floor Area of any Major's Store or of the Developer Mall Stores shall be so taken in Condemnation, or if twenty percent (20%) or more of the parking spaces located within four hundred feet (400') of the Store of any Party shall be so taken in eminent domain, then this REA may be terminated by the Major whose Tract is so affected or by any or all of the Majors if the Developer is the terminating Party.

Section 16.6 Mortgagee Participation. Nothing herein contained shall be deemed to prohibit any Mortgagee from participating in any Condemnation proceedings on behalf of any Party upon whose Tract it has a Mortgage, or in conjunction with any such Party; provided the same does not reduce the Award to any Party or the distribution thereof in accordance with Section 16.2 hereof.

Section 16.7 Extent of Reconstruction. Each Party (not terminating the REA as to its Tract pursuant to Section 16.4 or 16.5) shall to the extent required under Sections 13.2, 13.3 or

13.4 and to the extent practical, reconstruct its Tract to the extent of the Award (excepting any severance damages) paid to such Party, giving first priority to maintaining the parking ratio of Section 10.3; all reconstruction shall be in accordance with the requirements and subject to the provisions of this Article 16, and in accordance with Article 9 and Section 13.5 hereof.

Section 16.8 Inverse Condemnation. Should any inverse condemnation result by reason of actions of a public authority, including, without limitation, any acts or actions of any environmental protection act or regulations, and a judgment of a court of competent jurisdiction shall so determine, then the rights of the Parties shall be the same as though condemnation had taken place.

Section 16.9 Termination of Benefits. In the event of a permanent taking by condemnation or inverse condemnation of any portion of the Shopping Center, all easements appurtenant to the portion so condemned shall, upon the taking of such portion, terminate to the extent they are appurtenant to such portion, but shall continue as to any portion not so condemned.

Section 16.10 Termination As To a Tract. If this REA is terminated as to the Tract of a Party, but not in its entirety, the Party as to whom the REA has terminated shall in all events demolish its building or perform such restoration as necessary so that its improvements do not constitute a hazard or a nuisance and until the Termination Date, comply with the use restrictions and prohibitions set forth in Sections 8.3 and 8.4 hereof.

ARTICLE 17

INTENTIONALLY OMITTED

ARTICLE 18

SIGNS

Section 18.1 Criteria. Attached hereto, and marked Exhibit D, are criteria for all signs to be erected within the Shopping Center Site. No signs shall be erected or maintained in the

Shopping Center which do not conform in all respects to said criteria and no pylon signs shall be erected or maintained in the Shopping Center Site except as shown on Exhibit B. Two (2) pylon signs shall identify the Shopping Center name and one (1) pylon sign shall identify the entertainment/cinema complex, including a theatre readerboard sign. Such pylon signs shall contain no other information. Any change made to any erected sign which causes the same to fail to comply with the sign criteria is hereby prohibited. It is understood that said criteria expressly exclude therefrom, except for specific provisions thereof, the identification signs on the Stores of the Majors (including, without limitation, signs of the Majors on canopies).

Section 18.2 Modification of Signs. Any change made to any sign which initially conforms to the sign criteria which causes the same not to fall within the scope of the sign criteria is hereby prohibited. Any such changed sign shall be considered as a new installation and any deviation from the criteria shall similarly be prohibited.

Section 18.3 Shopping Center Identification Signs. The location of two (2) monument identification signs are shown on Exhibit B ("Monument Signs").

Developer shall cause the Project Architect to prepare and submit to the other Parties for their approval, the plans and specifications for the Monument Signs. Such plans shall include all technical information, including (i) lighting for the signs, (ii) colors to be used in the signs, and (iii) materials, and (iv) size and height. The Monument Signs shall be placed in the locations shown on Exhibit B and shall be used for only the identification of the Shopping Center.

Subject to its obtaining all required governmental permits, Developer shall install the Monument Signs in the locations shown therefor on Exhibit B as part of the Common Area work. The Monument Signs shall be maintained by Developer as part of the Common Area and the costs and expenses of such maintenance shall be an Exterior Common Area Maintenance Cost.

ARTICLE 19 5456

PROMOTIONAL FUND

Section 19.1 Creation and Purpose of Fund. Developer will establish and administer an advertising and promotional service fund (herein called the "Fund") to furnish and maintain professional Shopping Center-wide advertising and Shopping Center-wide sales promotions which will benefit all merchants of the Shopping Center. In conjunction with said Fund, Developer agrees to provide or cause to be provided a full-time Promotion Director, sufficient secretarial services, salaries for personnel, office rental, utilities, supplies, telephone and all equipment expense necessary for an efficient operation. A committee, composed of a representative of each Major who contributes to the Fund on a regular basis (at such Major's election), Developer and other Occupants in the Shopping Center, will be formed to review the advertising and promotional activities sponsored by the Fund.

Section 19.2 Contribution by Majors. Each Major's agreement respecting contributions to the Fund is provided in its respective Allocable Share Agreement.

Section 19.3 Contribution by Developer. Developer agrees to make an annual contribution to the Fund for each fiscal year of its operation in an amount equal to twenty-five percent (25%) of the aggregate amount of the annual contributions payable to the Fund by all Occupants (excluding Developer) of the Shopping Center, such annual contribution by Developer to be payable in equal monthly installments during the Fund's fiscal year for which such contribution is being made. All monies received by the Fund shall be used solely for the purpose of advertising and promoting the Shopping Center. No funds shall be used to advertise or promote any one or more individual merchant, it being the intent that all advertising and promotion by the Fund shall be institutional in nature.

ARTICLE 20

COVENANTS OF DEVELOPER

Section 20.1 Management Criteria. Developer covenants to and agrees with each Major, subject to the provisions of Articles 13, 15 and 16, and subject to the other provisions of this Article 20, that, so long as at least one (1) Major is Operating its Store in at least the Minimum Floor Area specified in Section 8.1 (herein, an "Operating Major"), Developer will manage and Operate, or cause to be managed and Operated, the following Developer Improvements on the Developer Tract in the following manner:

A. The Developer Mall Stores, as a complex of retail merchandising and retail service establishments which is a part of a first class enclosed regional mall shopping center development containing a two (2) level enclosed mall and other related common area facilities, provided, however, at any time after the period any Major is required to Operate pursuant to Section 21.1 or 13.3(B) (each in this Section 20.1, the "Operating Period"), there shall be less than three (3) Operating Majors, then until an additional Major shall become an Operating Major, Developer's obligation to so manage and Operate, or cause to be so managed and Operated, shall be limited to the Developer Mall Stores Immediately Adjacent as to the Operating Major(s) as provided in Section 13.3(B); and

B. Maintain a quality of management and Operation not less than that generally adhered to in first class enclosed regional mall shopping centers in the Albuquerque, New Mexico metropolitan area; and

C. Use good faith, commercially reasonable, diligent efforts to:

(1) Have the Floor Area of the Developer Mall Stores occupied in its entirety; provided, however, if after the Operating Period there shall be less than three (3) Operating Majors (whether or not such Majors are required to so Operate),

Developer shall be required only to use best efforts to have occupied the Floor Area in the Developer Mall Stores located Immediately Adjacent to the Operating Major(s) as provided in Section 13.3; and

(2) Have at all times on each level a reasonably balanced, diversified and reasonably evenly distributed mixture of retail stores, merchandise, service Occupants and other users permitted in this REA in the Developer Mall Stores Developer is required to Operate; and

D. Under the name "Cottonwood Mall", unless prohibited by law to use the same, or such other name as is unanimously approved by the Parties in their sole and absolute discretion; and

E. To have Floor Area in the Developer Mall Stores of not less than the Minimum Floor Area as is provided in Section 8.1; provided, however, that if at any time after the Operating Period there shall be less than three (3) Operating Majors, Developer shall be required only to have the Floor Area in the Developer Mall Stores located Immediately Adjacent to the Operating Major(s) as provided in Section 13.3; and

F. In accordance with the requirements of Exhibits D and E; and

G. To open the Developer Mall Stores and the Enclosed Mall to the extent and when provided in Section 5.3 and to maintain and Operate properly all Common Areas as provided in Article 10; and

H. Not to relocate the storefront lines of the Developer Mall Stores fronting on the Enclosed Mall or the location of the Enclosed Mall or to change, modify or alter the Enclosed Mall or the exterior of the Developer Mall Stores; and

I. To maintain the layout of its Tract and the Developer Improvements located thereon as shown on Exhibit B and Operate within the confines of the Shopping Center Site as depicted on Exhibit B, and, except as provided in Sections 8.8 and 16.4

relating to additional Automobile Parking Area, not to withdraw or add any real property from or to the Developer Tract; and

J. To keep the Enclosed Mall Operating and all entrances thereof open and to provide lighting, heating, cooling and ventilation for the Enclosed Mall and to maintain the air conditioning system therein in such manner so that the temperature and humidity throughout the Enclosed Mall is at a reasonably comfortable level and at the level contemplated by the provisions of Section 4.3B(5) of this REA at all times when the retail operations on the Developer Tract or the Tract of any Major are open for business and for not less than one-half hour before opened and three quarters of an hour after the same are closed; provided, however, that if, after the Operating Period, there shall be less than three (3) Operating Majors, then, until an additional Major becomes an Operating Major, Developer's obligation shall be limited to the Operation in accordance with the standards of this Section 20.1 of that portion of the Enclosed Mall located Immediately Adjacent to the Operating Major(s) as provided in Section 13.3.

Notwithstanding anything to the contrary in this Article 20, the covenants contained in this Article 20 shall not impose any greater obligation to rebuild, reconstruct or restore than as set forth in Article 13 hereof.

Section 20.2 Benefits of Majors. Each and all of the provisions of this REA on Developer's part to be performed (whether affirmative or negative in nature) are intended to and shall bind each and every Person which comprises or is part of Developer, at any time, and from time to time, and shall inure to the benefit of each respective Major.

Section 20.3 Covenants Binding on Developer Tract - Run with the Land. Each and all of the covenants of Developer in this REA contained shall bind the Developer Tract and shall bind each and every other Person having any fee, leasehold or other interest in any part of the Developer Tract, at any time and from time to time, to the extent that such part of the Developer Tract is affected by the covenants in question, or that such covenants are to be

performed thereon, and shall inure to the benefit of each Major, and its respective Tract and shall run with the land.

Section 20.4 Dominant and Servient Estates. With respect to the various covenants (whether affirmative or negative) on the part of Developer contained in this REA which affect or bind or are to be performed on portions of the Tract of any Party, the Tract benefitted by such covenant shall, during the term of this REA, be the dominant estate, and the Developer Tract (or if the particular covenant affects, binds, or is to be performed on less than the whole of the Developer Tract, then with respect to the particular covenant, such portion thereof, as is affected by, or bound by, the particular covenant, or on which the particular covenant is to be performed) shall during the term of this REA, be the servient estate.

ARTICLE 21

COVENANTS OF MAJORS

Section 21.1 Operating Covenants. A. Subject to Articles 13 and 16 and Section 28.13 hereof and subject to the other provisions of this Article 21, each of May, Penney, Mervyn's, Ward and Dillard covenants and agrees with Developer (i) that it will open its Store on or before its Scheduled Opening Date, in not less than its Initial Planned Floor Area set forth in Section 8.1, and (ii) that it will thereafter Operate or cause to be Operated, its Store in at least the Minimum Floor Area set forth in Section 8.1 for fifteen (15) consecutive years, under the trade names, respectively, of "Foley's", "Penney" (or "JC Penney"), "Mervyn's", "Montgomery Ward" (or "Ward") and "Dillard", or such trade name as each of May, Penney, Mervyn's, Ward, and Dillard, respectively, is from time to time then doing business in at least a majority of its retail department stores which then operate in regional shopping centers in New Mexico. During such Operating Period, in the event a Major Operates its retail department store in less than its entire Store, the Floor Area which it Operates as such a retail department store (which shall be not less than its Minimum Floor Area as hereinabove

provided) shall be immediately adjacent to the Enclosed Mall on each level, and shall have direct access to the Enclosed Mall on each level.

B. The hours of business, the number and types of departments to be Operated in each such Store, the particular contents, wares and merchandise to be offered for sale and the services to be rendered, the methods and extent of merchandising and storage thereof, and the manner of Operating such Store in every respect whatsoever shall be within the sole and absolute discretion of each such respective Major.

C. The Majors may each Operate a department or departments in their respective Stores in whole or in part by licensees, tenants and/or concessionaires.

D. The Parties agree that the operating covenant of each Major contained in Paragraph A, of this Section 21.1 (hereinafter referred to individually as a "Major Operating Covenant" and collectively as the "Majors Operating Covenants") is personal to Developer, is not assignable to any person or entity other than Developer's successors who become obligated to perform all or substantially all of Developer's obligations and covenants under this REA, any Mortgagee of Developer, such Mortgagee's successor, a purchaser of Developer's interest in the Shopping Center at a foreclosure sale or a purchaser who accepts a deed in lieu of foreclosure, and is not otherwise intended to be for the benefit of any third party beneficiaries. Except as permitted in the foregoing sentence, in the event that Developer (1) enters into any agreement with any person or entity giving such person or entity the right to require Developer to enforce, directly or indirectly, any of the Majors Operating Covenants, or (2) purports to assign any of the Majors Operating Covenants to any person or entity, such purported assignment or prohibited agreement granting the right to enforce such Majors Operating Covenants to any person shall be void and unenforceable. In the event Developer purports to assign any of the Majors Operating Covenants, or contracts to assign any of the Majors Operating Covenants, or grants any right to enforce any

of the Majors Operating Covenants, directly or indirectly, or enters into any agreement with any person or entity giving such person or entity the right to require Developer to enforce, directly or indirectly, any of the Majors Operating Covenants, Developer agrees to pay promptly upon demand made therefor, any and all claims, demands, actions, losses, liabilities, damages, expenses (including, without limitation, attorneys' fees) and costs (including, without limitation, court costs) of such Major of whatever kind or nature suffered by such Major as a result of such action on the part of Developer or incurred by such Major in defending litigation resulting from any such purported assignment or enforcement or in such Major obtaining a declaration of a court of competent jurisdiction that the purported assignment or the contract granting such enforcement right is void and unenforceable.

Section 21.2 Release from Obligations. A Major shall be released from the performance of its covenant and obligation to Operate contained in Section 21.1 in the event any one or more of the following conditions occurs:

A. If Developer fails to comply with, or violates, any of the provisions of Section 20.1, exclusive of paragraph F; provided, however, that Developer first shall have sixty (60) days after receipt of notice to cure any such default, or if such default cannot be cured within sixty (60) days, to commence diligently curing such default within such time and diligently cure such default within a reasonable time thereafter.

B. If Developer ceases to Operate at least sixty percent (60%) of the Initial Planned Floor Area of Developer Mall Stores reasonably evenly distributed on each level; provided, however, that Developer shall have twelve (12) months after receipt of written notice to the Developer of such condition to remedy the same, which twelve (12) month period shall not, except as may be extended in the event of any damage or destruction which is being restored in accordance with the provisions of Article 13, be subject to any other Force Majeure or any other extended cure periods otherwise available for a default. Such condition shall be

conclusively deemed to have been remedied if during said twelve (12) month period Developer shall have entered into bona fide leases and occupancy agreements providing for at least a three year term and which require the opening for business of Floor Area in the Developer Mall Stores sufficient to increase the occupancy of the Developer Mall Stores to sixty percent (60%) of the Initial Planned Floor Area in the Developer Mall Stores reasonably evenly distributed on each level, which bona fide leases and occupancy agreements shall provide for the actual commencement of occupancy of Floor Area by the Occupant within said twelve (12) month period.

C. If, as to Dillard, Mervyn's, Ward or May, three (3) of the other Majors, and as to Penney, two (2) of Dillard, Mervyn's, Ward or May, of which one must be Dillard or May: (i) have not opened their respective Stores within six (6) months after the Scheduled Opening Dates with no adjustment due to Force Majeure, or (ii) cease or fail to Operate their respective Stores in accordance with paragraph A of Section 21.1 and such cessation or failure continues for a period of six (6) continuous months, or (iii) cease or fail to Operate in less than seventy five percent (75%) of the number of their currently operating stores in the States of New Mexico, Arizona and Texas.

D. If such Major shall be released from the performance of its restoration obligations under Section 13.4.

E. If any of the Majors' Operating Covenants is modified, amended or released without the agreement of the Parties, except by bankruptcy or insolvency or other similar proceedings.

Nothing contained in the foregoing provisions of this Section 21.2 shall in any manner be construed as diminishing, or be deemed to constitute a waiver of, any other rights of a Major resulting from the failure of Developer to perform its covenants set forth in this REA or from the default of any other Party hereunder. Notwithstanding anything to the contrary, the covenants contained in Section 21.1 shall not impose any greater obligation to rebuild, reconstruct or restore than as set forth in Article 13 hereof.

Subject to the terms and conditions of this Section 21.2 (including the expiration of all notice, grace and cure periods provided for herein), a release from the covenants and obligations of Section 21.1 shall be effective upon the Major (if entitled to be released hereunder) giving notice thereof to Developer and to the other Majors, and thereupon the Major's Operating Covenant such Major provided in Section 21.1 and its reconstruction covenant in Section 13.4 shall terminate and such Major shall not be required thereafter to continue Operating its Store or to reinstitute such Operation, notwithstanding the subsequent curing of any default or condition referred to herein. Continued Operation by such Major following such notice shall not affect the effectiveness of such notice nor the release effected thereby.

Section 21.3 Subordination to Lien. The affirmative Operating covenants contained in Section 21.1 are automatically subordinated to the lien of any existing or future Mortgage recorded against the Tract which is burdened by such covenant (including, but not by way of limitation, any blanket Mortgage which may cover any other property or properties of such Party, whether owned in fee or as a leasehold) to the end that the Mortgagee or Person (other than such Party and its affiliates) who acquires title in the manner set forth in subparagraph A of Section 13.8, and all successors to or through any such Person (other than such Party and its affiliates) shall take free and clear of such affirmative Operating covenant. Each Party covenants and agrees to execute and deliver to the others, upon request therefor, such instruments, in recordable form, as shall at any time and from time to time be required (the form of which shall be in the reasonable judgment of counsel for the executing Party) in order to confirm or effect any such subordination as referred to in this Section 21.3.

Section 21.4 Benefits to Other Parties. Each and all of the provisions of this REA on the part of the respective Majors or Developer to be performed (whether affirmative or negative in nature) shall bind each and every Person comprised within the term "Major", or Developer, as the case may be, at any time and from

time to time, and (i) as to provisions to be performed by Developer, shall inure to the benefit of the Majors, and (ii) as to provisions to be performed by the Majors, or any Major individually, shall inure to the benefit of Developer and, unless a covenant by a Major is made only to Developer, shall inure to the benefit of the Majors.

Section 21.5 Covenants Binding Majors' Tract - Run with the Land. Each and all of the covenants of a Major in this REA contained shall bind the respective Major's Tract and shall bind each and every other Person having any fee, leasehold or other interest in any part of the Tract of such Major, at any time and from time to time, to the extent that such part of such Major's Tract is affected or bound by the covenants in question, or that such covenants are to be performed thereon, and (except as otherwise provided herein, e.g. in Section 21.1D) shall inure to the benefit of the other Parties and their respective Tracts, and shall run with the land.

Section 21.6 Dominant and Servient Estates. With respect to the various covenants (whether affirmative or negative) on the part of each Major contained in this REA, which affect or bind, or are to be performed on portions of the Tracts of any Party, the Tract benefitted by such covenant shall, during the term of this REA, be the dominant estate, and the Tract of the covenanting Major (or if the particular covenant affects, binds, or is to be performed on less than the whole of such Tract or Store Site, then with respect to the particular covenant, such portion thereof as is affected by, or bound by the particular covenant, or on which the particular covenant is to be performed), shall, during the term of this REA, be the servient estate.

Section 21.7 Temporary Cessation of Business. Any temporary cessation of business by any Major, not in excess of ninety (90) days in any twelve (12) month period, which is occasioned by the making of repairs, alterations or renovations, so long as such Major is using due diligence in making its repairs, alterations and renovations, and subject to interruptions caused by Force Majeure,

shall not constitute a breach of such Major's covenant to Operate as provided in this Article 21.

ARTICLE 22

TAXES AND ASSESSMENTS

Section 22.1 Payment. With the exception of assessments by SAD 223 which shall be paid or otherwise cause to be paid as set forth in the respective Allocable Share Agreements and/or Purchase and Sale Agreements of the Parties, each Party shall pay, or cause to be paid, prior to delinquency, all taxes and assessments upon its Tract, and the buildings and improvements thereon, provided that, if the taxes or assessments or any part thereof, may be paid in installments, any Party may pay each such installment as and when the same becomes due and payable.

Section 22.2 Contest. If any Party shall deem the taxes and/or assessments, or any part thereof, to be paid by such Party to be excessive or illegal, such Party shall have the right to contest the same at its own cost and expense, and shall have the further right to defer payment thereof so long as the validity or the amount thereof is contested in good faith; provided, however, that, if at any time payment of the whole or any part thereof shall be necessary in order to prevent the sale of the property for the lien of any such unpaid tax or assessment because of the nonpayment thereof, then the contesting Party shall pay or cause to be paid the same at least thirty (30) days in advance of the date when payment is necessary to prevent such sale. Any such payment may be paid under protest.

Section 22.3 Non-Payment of Taxes by a Party. In the event any Party shall fail to comply with its covenant as set forth in this Article 22, any other Party or its Mortgagee may pay such taxes and penalties and interest thereon, and shall be entitled to prompt reimbursement from the defaulting party for the sums so expended, with interest thereon as provided in Section 28.11.

Section 22.4 Assessment Benefiting Shopping Center. Anything in Section 22.1 to the contrary notwithstanding, in the event an

assessment is levied against one or more Tracts (or any property thereon) and such assessment relates to an improvement that is of general benefit to the Shopping Center Site as a whole as opposed to a special benefit to the Tract or Tracts levied against, or relates to the road improvements benefiting the Shopping Center Site and other real estate, such assessment shall be prorated among the owners of the Tracts comprising the Shopping Center Site based upon the proportion between the size (based on acreage) of each owner's parcel to the size of the Shopping Center Site; provided, however, any assessment levied in connection with or by reason of the initial construction of the Shopping Center (including any Off-Site Improvements benefiting the Shopping Center or any part thereof but excluding any and all road improvements which are assessed by SAD 223) shall be deemed part of the cost of the Common Improvement Work and paid in accordance with the provisions of this REA and the separate Allocable Share Agreements. If any assessment benefits a particular Tract exclusively, then, unless such assessment falls within the foregoing proviso, the owner with respect to that Tract shall be solely responsible for the payment of such assessment.

Section 22.5 Allocation of Taxes. If each Party's Tract is not separately assessed, the Parties shall cooperate in and endeavor to obtain separate assessments as separate tax parcels for each Tract, and so long as the Tracts are not separately assessed, the Parties shall apportion such taxes among themselves based on a fair and equitable basis.

ARTICLE 23

INTENTIONALLY OMITTED

ARTICLE 24

ATTORNEY'S FEES

In the event any Party shall institute any action or proceeding ("Suit") against any other Party relating to violations, threatened violations or failure of performance of or under this

REA, or any default hereunder, or to enforce the provisions hereof, then, and in that event, the "Prevailing Party" shall be entitled to recover as an element of its cost of Suit, and not as damages, a reasonable attorneys' fee to be fixed by the court. The Prevailing Party shall be the Party, if any, which by law is entitled to recover its cost of Suit only where the Suit proceeds to final judgment. A Party not entitled to recover its costs shall not recover attorneys' fees; provided, however, that when a Party shall have instituted and then dismissed suit as against another Party without the concurrence of such other Party, such other Party shall be the Prevailing Party. No sum for attorneys' fees shall be counted in calculating the amount of a judgment for purposes of determining whether a Party is entitled to recover its costs or attorneys' fees. The term "attorneys' fees" shall include fees of outside counsel and costs allocable to in-house counsel. The provisions of this Article 24 shall not be applicable to any declaratory relief action or cause of action.

ARTICLE 25

NOTICES

Section 25.1 Notices to Parties. Any notice, demand, request, consent, approval, designation or other communication which any Party is required or desires to give or make or communicate to any other Party shall be in writing and shall be given or made or communicated by Federal Express, Purolator Courier or other reputable overnight carrier with a request that the addressee sign a receipt evidencing delivery or by United States registered or certified mail, return receipt requested with postage prepaid, addressed, in the case of Developer to:

Simon Property Group, L.P.
115 West Washington Street
P.O. Box 7033
Indianapolis, Indiana 46207
Attention: Arthur W. Spellmeyer III

with a copy to:

Dann Pecar Newman & Kleiman
One American Square
Box 82008
Indianapolis, Indiana 46282
Attention: Andrew A. Kleiman, Esq.

and addressed, in the case of May to:

The May Department Stores Company
Attention: Executive Vice President,
Real Estate
611 Olive Street
St. Louis, Missouri 63101

with a copy to:

Foley's
1110 Main Street
Houston, Texas
Attention: Chairman

and

The May Department Stores Company
Office of Legal Counsel
611 Olive Street
St. Louis, Missouri 63101
Attention: Carol Fielding Fasano

and addressed, in the case of Dillard to:

Dillard Department Stores, Inc.
1600 Cantrell Road
Little Rock, Arkansas 72201
Attention: President

with a copy to:

Dillard Department Stores, Inc.
1600 Cantrell Road
Little Rock, Arkansas 72201
Attention: General Counsel

and addressed, in the case of Ward to:

998 Monroe Corporation
Attention: Secretary
One Montgomery Ward Plaza
535 W. Chicago Avenue
Chicago, Illinois 60671

with a copy to:

Montgomery Ward & Co., Incorporated
Attention: Vice President, Real Estate
One Montgomery Ward Plaza
535 W. Chicago Avenue
Chicago, Illinois 60671

and addressed, in the case of Penney to:

J.C. Penney Properties, Inc.
6501 Legacy Drive
Plano, Texas 75024-3698
Attention: Real Estate Attorney (Mail Stop 2105)

with copies to:

J.C. Penney Company, Inc.
6501 Legacy Drive
Plano, Texas 75024-3698
Attention: Real Estate Attorney (Mail Stop 2105)

and

J.C. Penney Company, Inc.
c/o Penney Store No.
Cottonwood Mall
Albuquerque, New Mexico
Attention: Store Manager

and addressed, in the case of Mervyn's, to:

Mervyn's

c/o Target Stores Real Estate
Attention: Property Administration
33 South 6th Street
Minneapolis, Minnesota 55402

subject to the right of any Party to designate a different address by notice similarly given at least ten (10) days before the effective date thereof. Any notice, demand, request or other communication (except any consent, approval or designation), including any copy, shall be so sent and shall be deemed to have been given, made, received and communicated, as the case may be, on the date of delivery or first attempted delivery as shown on the overnight carrier's delivery receipt or on the United States mail registered or certified matter return receipt. If any such notice requires any action or response by the recipient or involves any consent or approval solicited from the recipient, such fact shall be clearly stated in the notice in the manner provided for in Section 28.6C of this REA. Any consent, approval or designation shall be sent as above provided and be deemed to have been given, made, received and communicated, as the case may be, on the date the same was sent by overnight courier or deposited in the United States Mail in conformity with the above requirements. In the event that a Party shall give notice to another Party of any default by such Party under the provisions of this REA, such Parties shall concurrently send each of the other Parties a copy of such notice; provided, however, failure to give such notice to each of the other Parties shall not affect the validity of such notice

of default, nor shall the giving or failure to give such notice create any liability on the part of the Party so declaring a default.

Section 25.2 Mortgagee Notice. The Mortgagee under the Mortgage affecting the Tract of a Party shall be entitled to receive notice of any default by the Party as to such Tract, provided that such Mortgagee shall have delivered a copy of a notice acknowledged by the Mortgagor substantially in the form hereinafter contained to each Party. The form of such notice shall be as follows:

> The undersigned, whose address is _____ _____, does hereby certify that it is the "Mortgagee" (as defined in Section 1.21 of that certain Construction, Operation and Reciprocal Easement Agreement recorded on _____, 1995, in the Official Records of Bernalillo County, New Mexico) of the tract of land described on Exhibit A attached hereto and made a part hereof and being the Tract of (Party) in Cottonwood Mall, Albuquerque, New Mexico. In the event that any notice shall be given of the default of the Party upon whose Tract the Mortgage held by the undersigned applies, a copy thereof shall be delivered to the undersigned who shall have the same rights as such Party to cure such default. Failure to deliver a copy of such notice to the undersigned shall in no way affect the validity of the notice of default as it respects such Party, but shall make the same invalid as it respects the Mortgage of the undersigned and the Mortgagee.

Any such notice to a Mortgagee shall be given in the same manner as provided in Section 25.1 hereof at the address referred to in such notice. Giving of any notice of default or the failure to deliver a copy of such notice to any Mortgagee shall in no event create any liability on the part of the Party so declaring a default. In the event that any notice shall be given of the default of a Party and such defaulting Party has failed to cure or commence to cure such default as provided in this REA, then and in that event any such Mortgagee under the Mortgage affecting the Tract of the defaulting Party shall be entitled to receive an additional notice given in the manner provided in Section 25.1 hereof (except in the event of a default of Developer under section 20.1E, for which a Mortgagee of Developer shall not be given any additional time beyond that provided in Section 21.2B to cure such default), that the defaulting Party has failed to cure such default and such Mortgagee

shall have thirty (30) days after said additional notice to cure any such default, or if such default cannot be cured within thirty (30) days, and diligently to commence curing within such time and diligently to cure within a reasonable time thereafter.

ARTICLE 26

AMENDMENT

Section 26.1 Method and Effect of Amendment. The Parties hereto agree that the provisions of this REA may be modified or amended, in whole or in part, only by a declaration in writing, executed and acknowledged by all of said Parties, duly recorded in the Office of the Recorder of Bernalillo County, New Mexico. Any amendments or modifications hereof (including any extensions and renewals hereof), whenever made, shall be superior to any and all liens, to the same extent as this REA, as if such amendment or modification had been executed concurrently herewith. In the event a Party has a Mortgage which requires the Mortgagee's consent to any amendment of this REA, and such Mortgagee has given notice of the existence of such Mortgage to all of the other Parties to this REA in accordance with Section 25.2 hereof, the consent, in writing, of such Mortgagee to any proposed amendment, which consent shall not be unreasonably withheld, must be obtained in order for such amendment to be enforceable against or binding upon such Mortgagee. Nothing contained herein precludes any separate agreements between two or more Parties, provided that the other Parties shall not be bound or affected thereby.

Section 26.2 No Third Party Beneficiary. Except for the provisions of Sections 13.8, 21.3, 22.3, 25.2, 26.1 and 28.1, which are for the benefit of and enforceable by a Mortgagee and the Parties, the provisions of this REA are for the exclusive benefit of the Parties, and not for the benefit of any third Person, nor shall this REA be deemed to have conferred any rights, express or implied, upon any third Person.

ARTICLE 27

DEDICATION

Section 27.1 Joinder in Necessary Dedications. The Parties shall individually execute or join in the execution of such instruments as may be required in order to effectuate the installation of public utilities under and across portions of their respective Tracts to the extent necessary for the sole benefit of a Party's Tract or the Shopping Center.

Section 27.2 Limitations. No Party shall dedicate any portion of its Tract, except as provided in Section 27.1, for public purposes.

ARTICLE 28

MISCELLANEOUS

Section 28.1 Breach Shall Not Defeat Mortgage. A breach of any of the terms, conditions, covenants or restrictions of this REA shall not defeat or render invalid the lien of any Mortgage made in good faith and for value, but all such terms, conditions, covenants and restrictions shall, subject to Sections 13.8 and 21.3, be binding upon and effective against any Person who acquires title to said property or any portion thereof by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

Section 28.2 Breach Shall Not Permit Termination. It is expressly agreed that no breach of this REA shall entitle any Party to cancel, rescind or otherwise terminate this REA, but such limitation shall not affect, in any manner, any other right or remedies which the Parties may have by reason of any breach of this REA.

Section 28.3 Captions. The table of contents and the captions of the Sections and Articles of this REA are for convenience only and shall not be considered or referred to in resolving questions of interpretation and construction.

Section 28.4 Consent. In any instance in which any Party to this REA shall be requested to consent to or approve of any matter with respect to which such Party's consent or approval is required

by any of the provisions of this REA, such consent or approval or disapproval shall be given in writing, and such consent or approval shall not be unreasonably withheld, unless the provisions of this REA with respect to a particular consent or approval shall expressly provide that the same may be given or refused in the sole and absolute judgment or discretion of such Party. Requests for consent or approval shall be subject to the provisions of Section 28.6.

Section 28.5 Joint Preparation. This REA is to be deemed to have been prepared jointly by the Parties, and any uncertainty or ambiguity existing herein, if any, shall not be interpreted against any Party, but according to the application of the rules of interpretation of contracts.

Section 28.6 Exercise of Consent or Approval Rights.

A. Wherever in this REA the consent or approval of any Party is required, and unless a different time limit is provided in any Article of this REA, then subject to Section 28.6(C) such consent, approval or disapproval shall be given within thirty (30) days following the receipt of the item to be so consented to or approved or disapproved. In the event any Party refuses or fails to respond to any item requesting consent or approval within the time prescribed, the same shall be conclusively deemed to have been approved or consented to by such Party, unless the item may, by the terms of this REA, be consented to or approved or disapproved by the applicable Party in its sole discretion, in which case the same shall be deemed not to have been consented to or to have been disapproved by such Party. Any disapproval shall specify with particularity the reasons therefor; provided, however, that, wherever in this REA any Party is given the right to consent or approve or disapprove in its sole and absolute judgment or discretion, it may refuse to consent or disapprove without specifying a reason therefor and such refusal to consent or disapproval shall not be subject to contest in any judicial or other proceeding.

B. Wherever in this REA a lesser period of time is provided for than the thirty (30) day period hereinabove specified, the lesser time limit shall not be applicable unless the notice to the Party whose consent, approval or disapproval is required contains a correct statement of the period of time within which such Party shall act. Failure to specify such time shall not invalidate the notice but simply shall require the action of such Party within said thirty (30) day period.

C. Any document or item submitted for the consent or approval of any Party shall contain (a) a cover page prominently reciting (1) the date mailed, (2) the applicable REA Article involved and (3) the time within which a response is required under this REA and, (b) if applicable, shall contain a statement in capitalized letters and bold type face to the effect that the document, or the facts contained within such document is either (i) subject to the Party's sole and absolute discretion, or (2) shall be deemed approved or consented to by the recipient unless the recipient makes an objection thereto within the time specified in the notice, which shall be thirty (30) days unless this REA shall specify a different period. If the time for a response in the notice is incorrectly or not set forth, the time limit shall be thirty (30) days unless a longer time period is specified in the REA, in which case the longer period of time shall control. Failure to specify such time shall not invalidate the notice but simply shall require the action of such Party within thirty (30) days (or such longer period) after being advised of the required time frame. Notwithstanding the foregoing, no recipient's approval of or consent to the subject matter of a notice shall be deemed to have been given by its failure to object thereto if such notice (or the accompanying cover letter) did not fully comply with the provisions of this Section or if the recipient was entitled to refuse such consent or deny such approval in its sole discretion.

D. Wherever in this REA provision is made for approval "by the Parties" or "by the Majors" such phrase shall mean the approval of each of the Parties or each of the Majors.

Section 28.7 Governing Law. This REA shall be construed in accordance with the laws of the State of New Mexico.

Section 28.8 Injunctive Relief. In the event of any violation or threatened violation by any Person of any of the terms, restrictions, covenants and conditions of this REA, any of the Parties shall have the right to enjoin such violation or threatened violation and to obtain specific performance and mandatory relief in a court of competent jurisdiction. Prior to the commencement of any such action, prior written notice of such violation or threatened violation shall be given to the other Party or other Person responsible therefor that an injunction will be sought. Any of the Parties shall also have the right to bring an action for injunctive or declaratory relief to prevent any threatened breach or default hereunder or to obtain such interpretation of the provisions hereof as such Party shall desire.

Section 28.9 No Partnership. Neither anything in this REA contained nor any acts of the Parties hereto shall be deemed or construed by the Parties hereto, or by any of them, or by any third Person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between or among any of the Parties.

Section 28.10 Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Shopping Center to the general public or for the general public or for any public purpose whatsoever, it being the intention of the Parties hereto that this REA shall be strictly limited to and for the purposes herein expressed and strictly for the benefit of the Parties except as provided in Section 26.2.

Section 28.11 Payment on Default. If pursuant to this REA any Party (A) is compelled or elects to pay any sum of money or do any acts which require the payment of money by reason of any other Party's failure or inability to perform any of the terms and provisions in this REA to be performed by such other Party or (B) does not pay any other sum when due to any other Party pursuant to the terms and provisions of this REA or its Allocable Share

Agreement, the defaulting Party shall promptly upon demand, reimburse the Party making payment under subsection (A) or pay the Party to whom payment was owing under subsection (B) for such sums, and all such sums shall bear simple interest at the rate of one percent (1%) per annum over the then existing announced posted ("prime") rate of interest per annum of the Sunwest Bank of Albuquerque, N.A., Albuquerque, New Mexico (but in no event exceeding the maximum rate permitted by law) from the date of expenditure in the case of (A) or the due date of payment in the case of (B) until the date of such reimbursement or payment.

If reimbursement or repayment shall not be made within ten (10) days after such demand is made, the Party having so paid, or to whom the amount is so due, shall have the right to deduct the amount thereof, together with interest as aforesaid, without liability or forfeiture, from any sums then due or thereafter becoming due from it to the defaulting Party hereunder or under its Allocable Share Agreement.

Any deduction made by any Party pursuant to the provisions of this Section 28.11 from any sums due or payable by it hereunder or under its Allocable Share Agreement shall not constitute a default in the payment thereof unless such Party fails to pay the amount of such deduction (with interest thereon at the rate provided above from the respective dates of deduction) to the Party to whom the sum is owing within thirty (30) days after final adjudication that such amount is owing. The option given in this Section 28.11 is for the sole protection of the Party so paying or to whom such sum is due and its existence shall not release the defaulting Party from the obligation to perform the terms, provisions, covenants and conditions herein provided or in its Allocable Share Agreement to be performed thereby or deprive the Party so paying or to whom such sum is due of any legal or equitable rights which it may have by reason of any such default.

Section 28.12 Limited Liability of Developer and Exculpation of Partners. Notwithstanding anything contained in this REA or in any Allocable Share 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 Allocable Share Agreement, or upon any judgment recovered pertaining to any of the same, or shall breach any warranty made hereunder and, as a consequence thereof any Major, or its successors and assigns, shall recover a money judgment against Developer, such judgment shall (subject to the rights of any Mortgagee whose lien predates the filing of the complaint which results in such judgment) be enforced against and satisfied out of only (A) the proceeds of sale produced upon execution of such judgment and levy thereon against Developer's interest in the Developer Tract and/or the Developer Improvements thereon, (B) the rents, issues or other income receivable from the Developer Tract and/or the Developer Improvements or from the Reserve Tracts or the improvements thereon (to the extent they are then owned by Developer) thereon after such judgment is obtained, (C) the consideration received by Developer from the sale or other disposition or refinancing of all or any part of Developer's interest in the Developer Tract and/or the Developer Improvements, made after such failure of performance or breach of warranty (which consideration shall be deemed to include any assets thereafter held by Developer to the extent that the value of same does not exceed the proceeds of any such sale, disposition or refinancing), (D) any insurance proceeds or condemnation award payable to Developer or paid but still being held by Developer as the result of any casualty to or condemnation of the Developer Tract and/or Developer Improvements, and (E) any sums due or to become due from the Major holding such judgment to Developer, regardless of whence the obligation arises, by way of set-off. The Majors and any person damaged by, through or under a Major holding any claim or action against Developer shall look solely to the Developer Tract and Developer Improvements thereon and to said property specified in clauses (A), (B), (C), (D) and (E) above for the payment and satisfaction of any such claim or action and any judgment thereon. Except as provided in the preceding sentences, Developer shall not

have any liability for the performance or payment of any such covenant, warranty or obligation hereunder or under any such other agreement or upon any judgment thereon. Except as provided in the preceding sentence, Developer shall not have any personal liability, and no partner in Developer nor any partner in a partner in Developer, nor any successors or assigns of any of the foregoing, shall have any personal liability for the performance or payment of any covenant, warranty or obligation of Developer hereunder or under any such other agreement or upon any judgment thereon. The provisions of this Section 28.12 are not intended to relieve Developer from the performance of any of its obligations hereunder, but rather to limit Developer's liability as aforesaid and relieve and release the partners in Developer partnership and the partners in such partner of any such liability as aforesaid; nor shall any of the provisions of this Section 28.12 be deemed to limit or otherwise affect any Major's right to obtain injunctive relief necessary to enforce other rights specifically granted to the Majors in this REA, their respective Allocable Share Agreements, or to avail itself of any right or remedy, which may be accorded a Major under the terms of this REA or its Allocable Share Agreement by reason of Developer's failure to perform its obligations hereunder or any other agreement supplemental hereto. The provisions of this Section 28.12 shall inure to the benefit of Developer's successors and assigns, including mortgagees, purchasers at foreclosure sales, and recipients of deeds in lieu of foreclosure and successors and assigns of the same. To the extent that (with or without recourse to the limited remedies provided in this Section 28.12) a Major is, by virtue of the foregoing limitations, unable to recover the full amount of any money judgment against Developer, Developer, its successors and assigns, shall, for so long as such amount (and interest thereon at the rates provided in Section 28.11) remains unpaid, be precluded and estopped from (1) enforcing and collecting any and all of such Major's monetary obligations to Developer under (or by reason of a breach of) this REA and such Major's Allocable Share Agreement and

(2) enforcing (or claiming any breach of) such Major's covenants under Articles 13 and 21 hereof.

Section 28.13 Assignment, Transfer, Mortgage and Release.

A. Transfer Not A Release. No transfer or conveyance by any Party of all or any part of its Tract or assignment of this REA shall be deemed to release such Party from any of its obligations hereunder, except as hereinafter provided in this Section 28.13.

B. Transfer of Entire Interest by Major. If any Major with respect to its Tract shall sell, transfer or convey all of its Tract and assign its rights under this REA with respect to such Tract, then such Major shall be released from all further liability with respect to such Tract thereafter accruing hereunder and under its Allocable Share Agreement, except for its Operating Covenant and its obligations under Article 7, arising or accruing from and after the effective date of such sale, transfer or assignment (but not from any obligation accruing or pertaining to any period prior to such sale, transfer or assignment) provided that the following conditions are satisfied: (i) with respect to accrued obligations, any and all amounts which shall then be due and payable by such grantor or assignor to Developer or any other Party to this REA under an Allocable Share Agreement or otherwise shall have been paid to Developer or such other Party or adequate provision therefor satisfactory to Developer or the applicable Parties shall have been made; (ii) such grantor or assignor shall give notice to the other Parties to this REA of any such sale, transfer, conveyance or assignment promptly after the filing for record of the instrument effecting the same, and (iii) the transferee shall have executed and delivered to the other Parties a written, recordable instrument in which: (A) the name and notice address of the transferee shall be disclosed; and (B) the transferee shall acknowledge, assume and become liable for its obligations and agree to be bound by this REA (and, where appropriate, under the Allocable Share Agreement(s)) and perform all obligations thereunder arising or occurring from and after the effective date of such sale, transfer, conveyance or assignment, in accordance

with the provisions of this REA (and such Allocable Share Agreement). If such Major shall fail to deliver any such written notice and instrument the covenants hereof shall continue to be binding upon and enforceable against such Major until such failure is cured; notwithstanding the foregoing, such covenants shall be binding upon and enforceable against the transferee at all times.

Notwithstanding anything to the contrary contained in this REA, each Major may:

(a) lease or sell its Tract to (i) any parent company which owns all or substantially all of the outstanding shares of such Major, (ii) any subsidiary corporation of such parent company or such Major, (iii) any entity which may succeed to substantially all of the business of such Major or such parent company in the State of New Mexico or (iv) any corporation which may, as the result of a reorganization, merger, consolidation or sale of stock or assets (collectively, a "Sale"), succeed to the majority of the business of such Major or parent company in the State of New Mexico. In any such event, such Major shall be released from all further obligations under this REA (including without limitation such Major's Operating Covenant, if any) and its Allocable Share Agreement occurring subsequent to such Sale if such Sale is to such company, corporation or entity which acquires the majority of its business or assets in the State of New Mexico, and which, by written instrument in recordable form, expressly acknowledges its obligations pursuant to and agrees to be bound by this REA (including without limitation such Major's Operating Covenant, if any) and/or

(b) Mortgage its Tract or enter into a Sale and Leaseback of its Tract and, in connection with any such transaction, assign its interest in this REA.

Anything in this Section 28.13 to the contrary notwithstanding, (i) the terms "May", "Ward", "Penney", "Mervyn's",

"Dillard", for the purposes solely of Articles 7 and 21.1(A) hereof, shall mean The May Department Stores Company, a New York corporation, Montgomery Ward & Co, Incorporated, a Delaware corporation, J.C. Penney Company, Inc., a Delaware corporation, Mervyn's, a California corporation, Dillard Department Stores, Inc., a Delaware corporation, respectively, or any corporation which may, as the result of reorganization, merger, consolidation or sale of stock or assets, succeed to at least a majority of such Party's assets in New Mexico, and (ii) each such Person shall be released from all obligations of such Person under this REA to be performed on or after the effective date of the transfer if it transfers its interest in its Tract to a Person who acquires at least a majority of its assets in New Mexico, and if such acquiring Person by written instrument in recordable form expressly assumes all of such Person's obligations hereunder to be performed on or after the date of such transfer.

C. Transfer of Entire Interest by Developer. If the Developer shall sell, transfer or convey all of the Developer Tract with an attendant assignment of its rights and obligations under this REA as Developer, Developer shall be released from all further liability as Developer thereafter accruing hereunder and under its Allocable Share Agreements with respect to the Developer Tract from and after the date upon which the grantee shall become liable for the performance of the terms, conditions, covenants and agreements in this REA and its Allocable Share Agreements thereafter to be kept, observed and performed by Developer, but only on condition that:

(1) a duly executed and acknowledged copy, in recordable form, of the instrument(s) by which the grantee shall have become liable for the obligations of Developer under the REA and the separate agreements between Developer and each Major shall be delivered to the other Parties hereto, which instrument(s) shall be reasonably satisfactory to counsel for such other Parties; and

(2) the Developer shall give notice to the other Parties to this REA of any such sale, transfer, conveyance or assignment promptly after the filing for record of the instrument effecting the same, which notice shall disclose the name and notice address of the transferee; and

(3) at the time Developer is to be released of all further liability hereunder with respect to the Developer Tract, any and all amounts which shall then be due and payable by Developer to the Majors hereto under this REA, any Allocable Share Agreements or otherwise shall be paid to such other Parties hereto or adequate provision therefor satisfactory to such Party be made.

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 $10,000,000, or have its obligations guaranteed by an entity with such net worth, and shall be of good repute;

(b) any purchaser or transferee of the Developer Tract shall either be experienced in the operation of first-class enclosed mall regional shopping centers or shall agree in writing to employ qualified professional management for the Shopping Center;

(c) Developer shall have delivered to the other Parties 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 REA (subject to the terms of Section 28.12 hereof) and the Allocable Share Agreement(s) and perform all obligations thereunder in accordance with the provisions of this REA and such Allocable Share Agreements; and

(d) at the time Developer is to be released of all further liability hereunder, any and all amounts which shall then

be due and payable by Developer (without regard to the limitations of Section 28.12 for such purposes) to the other Parties hereto shall not be released until they are paid to such other Parties hereto.

If Developer shall fail to deliver any such written notice and instrument, the covenants hereof shall continue to be binding upon and enforceable against Developer until such failure is cured; notwithstanding the foregoing, such covenants shall be binding upon and enforceable against the transferee at all times. Notwithstanding the aforesaid, Developer shall not directly or indirectly transfer its interest in the Developer Tract or any part thereof prior to the expiration of one (1) year following (1) the opening of the Enclosed Mall for business with the public as provided in and in accordance with the terms of Section 5.3, (2) the leasing of the Developer Mall Stores in accordance with the terms of Section 7.2C and (3) the completion of construction of the Developer Improvements and of the Common Improvement Work in accordance with Articles 5 and 6, respectively (except for a Mortgage loan transaction entered into for the purpose of financing the acquisition of the Developer Tract and the construction, development and operation of the Developer Improvements and Common Area Improvements, including, but not limited to, both interim and permanent financing, or any transfer to any entity designed to permit an investor to own a direct or indirect interest in the Developer Tract, and except further that any general or limited partner in Developer may dispose of its interest in Developer provided that Developer remains controlled by Simon Property Group, Inc. or an Affiliate at all times prior to the expiration of such one (1) year period). The term "Affiliate", shall mean, wherever used in this Section, (1) Melvin Simon, (2) Herbert Simon, (3) David Simon, (4) any entity of which Melvin Simon, Herbert Simon and/or David Simon owns, directly or indirectly, at least 51% of the interest therein, (5) a trust or trusts established by and for Melvin Simon, Herbert Simon, David Simon or any of them, (6) a qualified REIT subsidiary of Simon Property Group, Inc., (7) any

entity which owns a controlling beneficial interest in the stock of Simon Property Group, Inc., so long as Simon Property Group, Inc. is not dissolved and maintains its status as a REIT, or (8) any combination of the foregoing persons or entities which (a) owns or has the right to vote a controlling interest of the managing general partner of Developer or (b) is the managing general partner of the managing general partner of Developer or (c) directly or indirectly owns a controlling interest in Developer ; provided, however, that notwithstanding any such transfer, Developer shall, at all times after such transfer and prior to the expiration of such one year period, employ an entity, the day-to-day operations of which are controlled by Developer or by one or more of the persons named in subparagraph (1), (2), (3), (4) and (6) above to perform the development, construction and leasing duties described in this Section.

D. Transfer of Less Than Entire Tract. In the event any Party owns, sells, transfers or conveys less than all of its Tract (excluding transfers by condemnation, deeds in lieu of foreclosure or for public rights-of-way) at any time and from time to time, then such Party and all other owners of said Tract shall be jointly and severally liable for the performance of all obligations imposed upon such Party under the terms of the REA with respect to the whole and/or any part of said Tract, provided further that, except in the case of multiple ownership for which provision is made in Section 1.24, the grantor shall then be and remain as agent for all such owners with full power to act on behalf of each thereof.

E. Retention of Interest. Notwithstanding anything to the contrary herein contained, if any Party shall (1) convey its Tract and assign its interest under this REA in connection with a Sale and Leaseback, and it or its parent corporation or a related or affiliated entity 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 (2) convey its Tract by way of a Mortgage and retain a possessory interest in its Tract, then, in neither of such events

shall the assignee of this REA under such Sale and Leaseback, or any subsequent owner of its Tract, or the trustee, beneficiary or mortgagee under any such 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 REA by it or fulfillment of any condition of this REA 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 Mortgagee.

However, at such time as the Party or its Affiliate who Mortgaged such Tract ceases to retain such possessory interest, such Mortgagee upon becoming a mortgagee in possession, a purchaser at a foreclosure sale, a grantee in lieu of foreclosure, and their respective successors and assigns, shall be deemed to have assumed and to be bound to perform such Party's obligations hereunder except such Party's Operating covenant set forth in Section 21.1. Nothing herein contained shall be construed as in any way releasing or diminishing the obligations and liabilities of any Party hereto or any obligations hereunder, including a Major's obligations under its Operating Covenant set forth in Section 21.1 and such Major's obligations under its Allocable Share Agreement during its Operating Period and the Developer's obligations under its Operating Covenant set forth in Section 20.1 and Developer's obligations under any Allocable Share Agreement(s).

This REA and the rights, interests and easements created hereunder shall be prior and superior to any mortgage or other lien upon or against any Party's Tract.

F. Release. Except as otherwise provided in this Section 28.13, anything in this REA to the contrary notwithstanding,

nothing in this REA shall preclude a release in any of the following circumstances:

(a) The release from all unaccrued obligations under this REA of a leaseback lessee in a Sale and Leaseback, upon the termination or expiration of the leaseback, so long as the Operating covenant has expired, provided such lessee shall have complied with the payment provisions of this Section 28.13 and the leaseback lessor shall have complied with clause (iii) of the first paragraph of Subsection B of this Section 28.13 or with clause (c) in Subsection C of this Section 28.13 above; or

(b) The release from all unaccrued obligations under this REA of any Mortgagee which shall have acquired title through foreclosure or deed in lieu of foreclosure, upon sale, transfer, conveyance or assignment of its title or interest and compliance by the successor with clause (iii) of the first paragraph of Subsection B of this Section 28.13 or with clause (c) of Subsection C of this Section 28.13 above; or

(c) The release from all unaccrued obligations under this REA of any leaseback lessor under a Sale and Leaseback, which leaseback lessor shall have acquired possession through termination or expiration of the Sale and Leaseback, upon the sale, transfer, conveyance or assignment of its title or interest and compliance by the successor with clause (iii) in the first paragraph of Subsection B of this Section 28.13 or with clause (c) of Subsection C of this Section 28.13 above.

Subject to the foregoing release provisions, upon any termination or expiration of the interest of the leaseback lessee or any surrender thereof under a Sale and Leaseback to the Mortgagee or any nominee of the Mortgagee which shall hold said interest for the benefit of such Mortgagee, and in the event of a foreclosure of a Mortgage (or deed in lieu thereof) the Mortgagee or the purchaser at a foreclosure sale (or grantor of the deed in lieu) and their successors and assigns shall (notwithstanding any language in the leaseback document or any other instrument, or in

any instrument of surrender, preventing the merger of title in said Mortgagee and notwithstanding the fact that such surrender may be made to such a nominee of the Mortgagee) be liable for the performance of the obligations of such Party thereafter accruing under and pertaining to this REA, except that the covenants of the Majors contained in Section 21.1 shall be subordinated to the interest of said Mortgagee as provided in Section 21.3 with respect to a Mortgage.

Anything in this Section 28.13 to the contrary notwithstanding, upon any sale or assignment, no Party, and as to Developer no general partner, nor general partner of a signatory to this REA, shall by reason of such sale or assignment be released from its obligations to construct improvements pursuant to Articles 4, 5 or 6 hereof, and to open the Enclosed Mall and lease and/or to open Floor Area within the Developer Mall Stores as provided in Article 5, to open Floor Area as provided in Article 7.

Section 28.14 Severability. If any term, provision, covenant or condition contained in this REA shall, to any extent, be invalid or unenforceable, the remainder of this REA (or the application of such term, provision, covenant or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable), except those terms, provisions, conditions or covenants which are made subject to or conditioned upon such invalid or unenforceable terms, provisions, covenants or conditions, shall not be affected thereby, and each term, provision, covenant and condition of this REA shall be valid and enforceable to the fullest extent permitted by law.

Section 28.15 Covenants Running with the Land. The provisions and covenants in this REA, the Allocable Share Agreements and any other agreements supplemental hereto shall, except as otherwise expressly provided herein, run with the land, both as respects benefits and burdens created herein.

Section 28.16 Time of Essence. Time is of the essence with respect to the performance of each of the terms, provisions, covenants and conditions contained in this REA.

Section 28.17 Waiver of Default. A waiver of any default shall be in writing and no waiver of any default by any Person under this REA shall be implied from any omission by any Party to take any action in respect of such default if such default continues or is repeated. No express waiver of any default shall affect any default or cover any period of time other than the default and period of time specified in such express waiver. One or more waivers of any default in the performance of any term, provision, covenant or condition contained in this REA shall not be deemed to be a waiver of any subsequent default in the performance of the same term, provision, covenant or any condition or other term, provision, covenant or condition contained in this REA. The consent or approval by any Party to or of any act or request by any other Party requiring consent or approval shall not be deemed to waive or render unnecessary the consent to or approval of any subsequent similar acts or requests.

Section 28.18 Rights Cumulative. The rights and remedies given to any Party by this REA shall be deemed to be cumulative and no one of such rights and remedies shall be exclusive of any of the others, or of any other right or remedy at law or in equity (except as limited by Section 28.2) which any such Party might otherwise have under this REA, and the exercise of one such right or remedy by any such Party shall not impair such Party's standing to exercise any other right or remedy.

Section 28.19 Estoppel Certificates. Each Party hereby agrees that, upon written request of any other Party, it will promptly (within forty-five (45) days after receipt of such request) issue to such other Party, or to any Mortgagee or proposed Mortgagee, or purchaser or proposed purchaser, but not more than twice in any calendar year, an estoppel certificate stating to the best of its knowledge: (A) whether the Party to whom the request has been directed has knowledge of any default under the REA which has not been cured, and specifying the nature of any defaults; (B) whether to its actual knowledge the REA has been assigned, modified or amended; and (C) whether the REA as of that date is in full

force and effect. Such statement shall act as a waiver of any claim by the Party furnishing it to the extent the claim is based upon contrary facts asserted against a bona fide encumbrancer or purchaser for value without knowledge of facts to the contrary of those contained in the statement, and who has acted in reasonable reliance upon the statement. However, such statement shall in no event constitute a waiver of any claim by the Party furnishing such statement against the Party requesting such statement and shall in no event subject the Party furnishing it to any liability whatsoever, notwithstanding the negligent or otherwise inadvertent failure of such Party to disclose correct and/or relevant information.

Section 28.20 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 (including without limitation all federal, state and local accessibility guidelines and/or requirements), with all regulations of the local Fire Insurance Rating organizations having jurisdiction or any other organization or board exercising similar functions, respecting the construction, maintenance and operation of its improvements.

Section 28.21 Locative Adverbs. The locative adverbs, "herein", "hereunder", "hereto", "hereby" and like words whenever the same appear in this REA mean and refer to this REA in its entirety and not to any specific Article, Paragraph or subparagraph hereof, unless expressly otherwise provided.

Section 28.22 Successors. Except as herein otherwise expressly provided, the covenants, conditions and agreements contained in this REA shall be binding upon and shall inure to the benefit of Developer and the Majors and their respective successors and assigns.

Section 28.23 Counterparts. This REA may be signed in several counterparts, each of which shall be deemed an original, and all such counterparts shall constitute one and the same instrument.

Section 28.24 Hazardous Materials.

A. For purposes hereof, the following terms shall have the following meanings:

(a) "Environmental Laws" shall mean all statutes, ordinances, orders, rules and regulations of all federal, state or local governmental agencies relating to the use, generation, manufacture, installation, release, discharge, storage or disposal of Hazardous Materials.

(b) "Hazardous Materials" shall mean and include, but shall not be limited to, any (i) "hazardous substance", "pollutant" or "contaminant" (as defined in Sections 101(14), (33) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Sections 9601(14), (33) or the regulations designated pursuant to Section 102 of CERCLA, 42 U.S.C. Section 9602 and found at 40 C.F.R. Part 302), including any element, compound, mixture, solution, or substance which is or may be designated pursuant to Section 102 of CERCLA; (ii) all substances which are or may be designated pursuant to Section 311(b)(2)(A) of the Federal Water Pollution Control Act ("FWPCA") 33 U.S.C. Sections 1251, 1321(b)(2)(A), as amended; (iii) any hazardous waste having the characteristics which are identified under or listed pursuant to Section 3001 of the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901, 6921, as amended ("RCRA") or having such characteristics which shall subsequently be considered under RCRA to constitute a hazardous waste; (iv) any substance containing petroleum, as that term is defined in Section 9001(8) of RCRA, 42 U.S.C. Section 991(8) or 40 C.F.R. Part 280 including without limitation waste oil; (v) any toxic pollutant which is or may be listed under Section 307(a) of the FWPCA, 33 U.S.C. Section 1317(a); (vi) any hazardous air pollutant which is or may be listed under Section 112 of the Clean Air Act, 42 U.S.C. Sections 7401, 7412, as amended; (vii) any imminently hazardous chemical substance or mixture with respect to which

action has been or may be taken pursuant to Section 7 of the Toxic Substances Control Act, 15 U.S.C. Sections 2601, 2606, as amended; (ix) any asbestos, asbestos containing material or urea formaldehyde or material which contains it; and (x) all other toxic materials, pollutants, contaminants and hazardous substances and wastes regulated by any federal or applicable state or local environmental law.

B. The Majors and Developer, and their respective agents, employees, contractors and subcontractors, shall not use Hazardous Materials on, about, under or in the Shopping Center Site, except as part of the ordinary course of business in the construction and operation of a regional shopping center. In the event of a release in, about, under or on the Shopping Center Site by a Major or Developer or its agent, employee, contractor or subcontractor, of any Hazardous Materials, Developer or Major shall immediately take such remedial actions as may be necessary in accordance with the requirements of Environmental Laws. In the event of a release in, about, under or on the Shopping Center Site by any tenant of Developer, or such tenant's agents, employees, contractors, subcontractors and subtenants, Developer shall immediately pursue such tenant to take such remedial action as may be necessary in accordance with the requirements of Environmental Laws. If such tenant fails to take such remedial actions within a reasonable period, Developer shall take such remedial actions as may be necessary in accordance with the requirements of Environmental Laws. Each of the Majors and Developer shall use, handle and store any Hazardous Materials hereunder in accordance with the applicable requirements of Environmental Laws.

DULY EXECUTED by the Parties hereto as the day and year first above written.

SIMON PROPERTY GROUP, L.P., a Delaware limited partnership, d/b/a Simon Real Estate Group Limited Partnership

By: SIMON PROPERTY GROUP, INC., a Maryland corporation, General Partner

By: _____
R.L. Foxworthy, VP

"Developer"

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, on this day personally appeared R.L. Foxworthy, known to me to be the person whose name is subscribed to the foregoing instrument, and known to me to be Vice President of SIMON PROPERTY GROUP, INC., which is the general partner in SIMON PROPERTY GROUP, L.P. d/b/a Simon Real Estate Group Limited Partnership, and acknowledged to me that he executed said instrument for the purposes and consideration therein expressed, and as the act of said corporation as a partner in such partnership.

Given under my hand and seal of office this 21st day of August, 1995.

_____
Notary Public

My Commission Expires:

_____

DONNA L. McLAUGHLIN
Notary Public State of Indiana
Morgan County
My Commission Expires June 30, 1998

My County of Residence:

_____

081595\a0337\REA2.red

APPROVED
ATTORNEY

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

By: Michael Lowenkron
, Vice President

"Penney"

Attest:

By: Alfred O. Hoellner
Assistant Secretary

STATE OF TEXAS)
) SS:
COUNTY OF COLLIN)

On this the 25th day of July, 1995, before me, a Notary Public duly authorized in and for the said County and the State aforesaid to take acknowledgements, personally appeared MICHAEL LOWENKRON, to me known and known to me to be a ~~Vice~~ President of J.C. PENNEY PROPERTIES, INC., one of the corporations described in the foregoing instrument, and acknowledged that as such officer, being authorized so to do, he executed the foregoing instrument on behalf of said corporation by subscribing the name of said corporation by himself as such officer and caused the corporate seal of said corporation to be affixed thereto, as his free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

In Witness Whereof, I hereunto set my hand and official seal.

Carole D. Chambers
Notary Public

My Commission Expires:
3.22.97

My County of Residence:
Dallas

CAROLE D. CHAMBERS
Notary Public, State of Texas
My Commission Expires 3-22-97

5495

998 MONROE CORPORATION, a Delaware corporation

By: _____

"Ward"

STATE OF Illinois)
) SS:
COUNTY OF Cook)

On this the 10th day of August, 1995, before me, a Notary Public duly authorized in and for the said County and the State aforesaid to take acknowledgements, personally appeared Lenore H. Heine, to me known and known to me to be an ~~Executive Vice~~ President of 998 MONROE CORPORATION, one of the corporations described in the foregoing instrument, and acknowledged that as such officer, being authorized so to do, he executed the foregoing instrument on behalf of said corporation by subscribing the name of said corporation by himself as such officer and caused the corporate seal of said corporation to be affixed thereto, as his free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

In Witness Whereof, I hereunto set my hand and official seal.

_____
Notary Public

My Commission Expires:
6-3-96

My County of Residence:
Cook

"OFFICIAL SEAL"
CYNTHIA L. BARTNIK
Notary Public, State of Illinois
My Commission Expires 6/3/96

5~~1696~~

MERVYN'S, a California corporation, qualified to do business in New Mexico as Mervyn's Inc.

By: Charles Lynch
Charles Lynch

"Mervyn's"

STATE OF _____)
) SS:
COUNTY OF _____)

On this the _____ day of _____, 19_____, before me, a Notary Public duly authorized in and for the said County and the State aforesaid to take acknowledgements, personally appeared _____ to me known and known to me to

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT No. 5907

State of California
County of ALAMEDA
On Aug 11, 1995 (DATE) before me, Nancy Bronzini Notary Public (NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC")
personally appeared Charles Lynch (NAME(S) OF SIGNER(S))

☒ personally known to me - **OR** - ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

NANCY A. BRONZINI
COMM. #971299
NOTARY PUBLIC-CALIFORNIA
ALAMEDA COUNTY
My Comm. Expires AUG. 13, 1996

WITNESS my hand and official seal.

Nancy A. Bronzini
SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

☐ INDIVIDUAL
☐ CORPORATE OFFICER
_____ (TITLE(S))
☐ PARTNER(S) ☐ LIMITED ☐ GENERAL
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

SIGNER IS REPRESENTING: (NAME OF PERSON(S) OR ENTITY(IES))
_____

DESCRIPTION OF ATTACHED DOCUMENT

REAz .god - cottonwood
TITLE OR TYPE OF DOCUMENT

_____
NUMBER OF PAGES

_____
DATE OF DOCUMENT

_____
SIGNER(S) OTHER THAN NAMED ABOVE

5[illegible]7

DILLARD DEPARTMENT STORES, INC., a Delaware corporation

By: _____

"Dillard"

STATE OF ARKANSAS)
) SS:
COUNTY OF PULASKI)

On this the 16th day of October, 1995, before me, a Notary Public duly authorized in and for the said County and the State aforesaid to take acknowledgements, personally appeared James B. Darr, Jr., to me known and known to me to be the Senior Vice President of DILLARD DEPARTMENT STORES, INC., one of the corporations described in the foregoing instrument, and acknowledged that as such officer, being authorized so to do, he executed the foregoing instrument on behalf of said corporation by subscribing the name of said corporation by himself as such officer and caused the corporate seal of said corporation to be affixed thereto, as his free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

In Witness Whereof, I hereunto set my hand and official seal.

Deborah K Agee
Notary Public

My Commission Expires:

_____

My County of Residence:

Pulaski

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

5~~498~~

THE MAY DEPARTMENT STORES COMPANY, a New York corporation

By: R. Dean Wolfe

"May"

STATE OF Missouri)
City) SS:
~~COUNTY~~ OF St. Louis)

On this the 11th day of August, 1995, before me, a Notary Public duly authorized in and for the said ~~County~~ City and the State aforesaid to take acknowledgements, personally appeared R. DEAN WOLFE, to me known and known to me to be the EXEC. VICE PRESIDENT of THE MAY DEPARTMENT STORES COMPANY, one of the corporations described in the foregoing instrument, and acknowledged that as such officer, being authorized so to do, he executed the foregoing instrument on behalf of said corporation by subscribing the name of said corporation by himself as such officer and caused the corporate seal of said corporation to be affixed thereto, as his free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

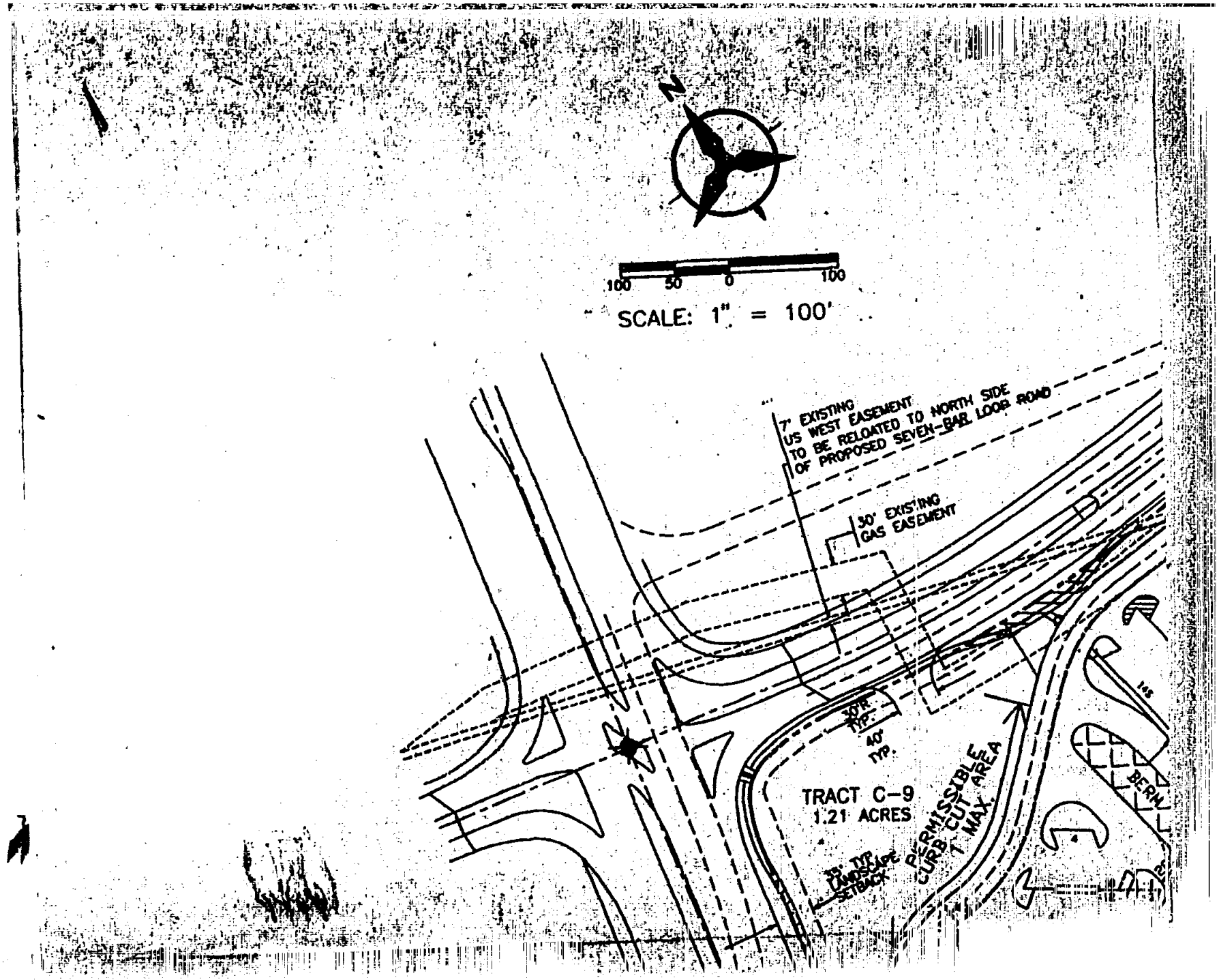
In Witness Whereof, I hereunto set my hand and official seal.

Catherine S. Peluso
Notary Public

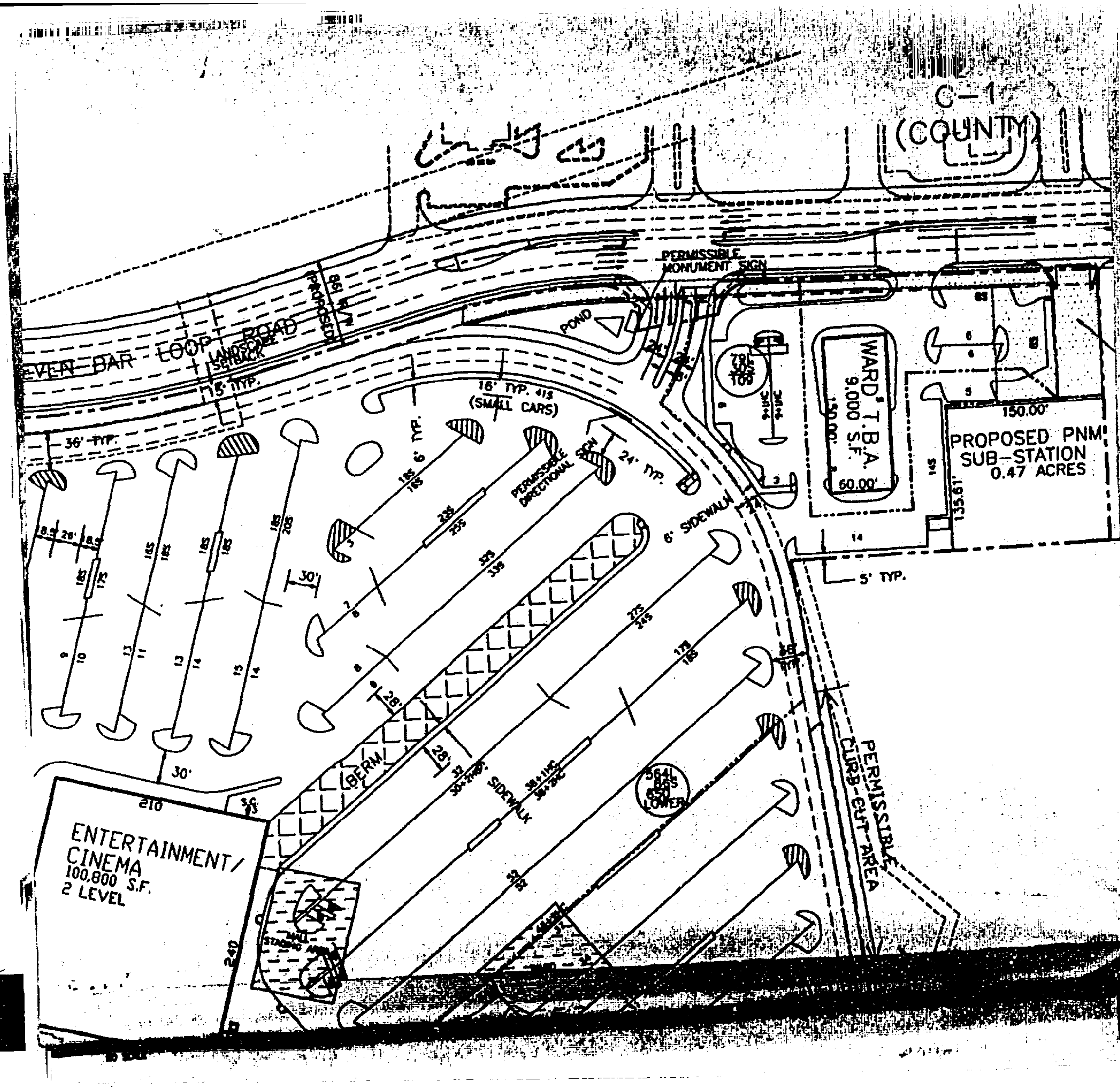
My Commission Expires:
5-11-97

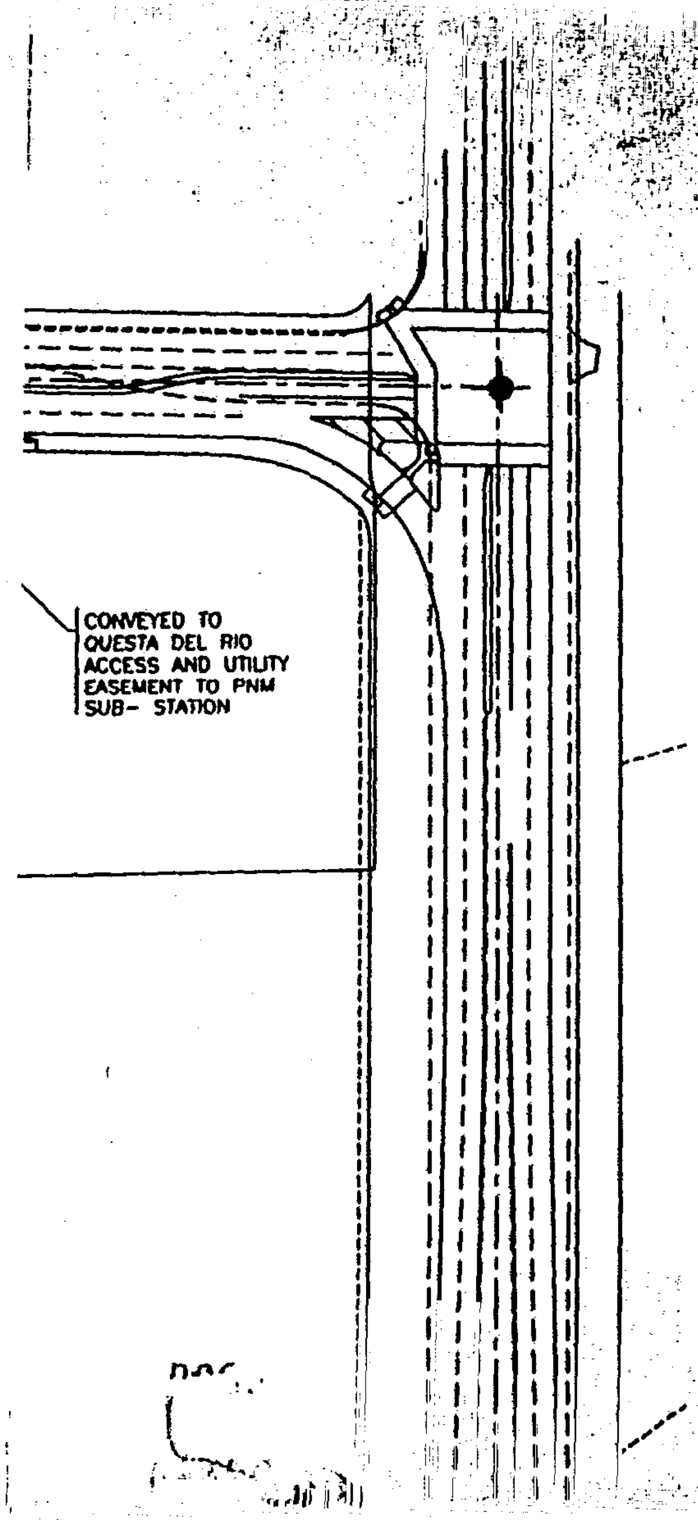
CATHERINE S. PELUSO
NOTARY PUBLIC—STATE OF MISSOURI
MY COMMISSION EXPIRES MAY 11, 1997
CITY ST. LOUIS

CATHERINE S. PELUSO NOTARY SEAL NOTARY PUBLIC STATE OF MISSOURI

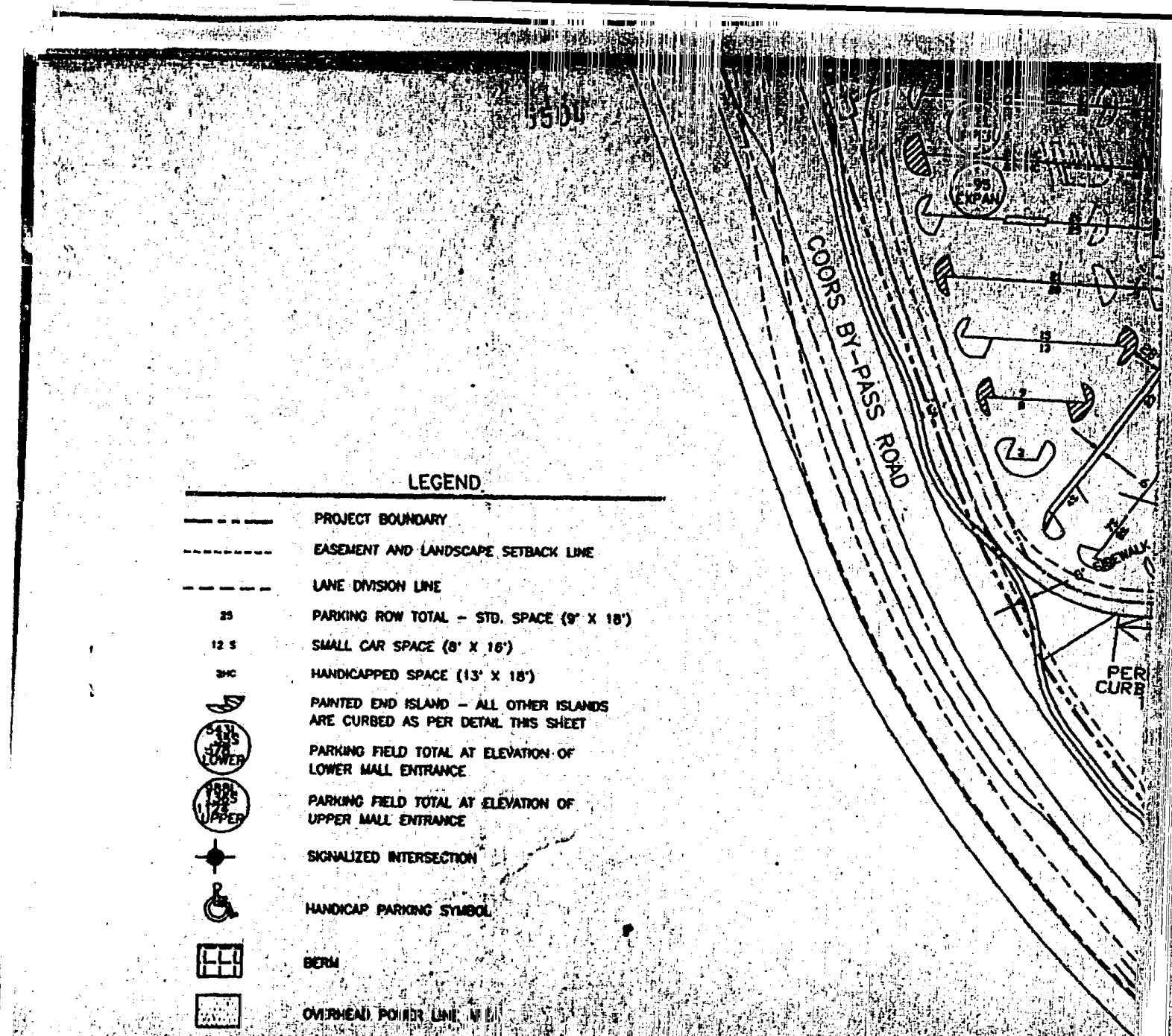

N
100 50 0 100
SCALE: 1" = 100'
7' EXISTING
US WEST EASEMENT
TO BE RELOCATED TO NORTH SIDE
OF PROPOSED SEVEN-BAR LOOP ROAD
30' EXISTING
GAS EASEMENT
30' R.
TYP.
40'
TYP.
TRACT C-9
1.21 ACRES
PERMISSIBLE
CURB CUT AREA
1 MAX.
30' TYP.
LANDSCAPE
SETBACK
BERM

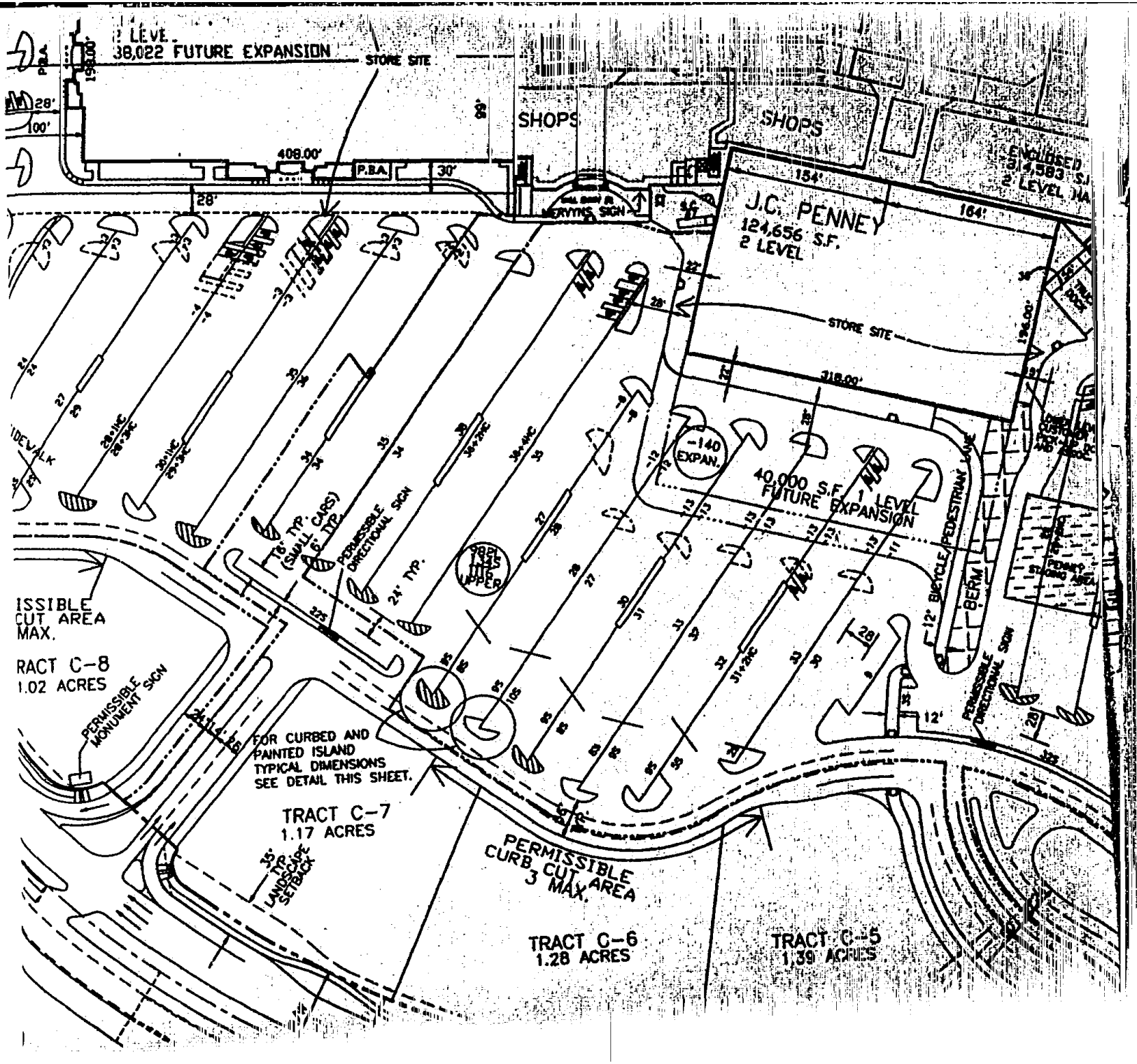
MERVYNS
84,048 S.F.
2 LEVEL
STORE SITE
COTTONWOOD
DRIVE
BERM
POND
PYLON SIGN
6' SIDEWALK
6' TYP.
24' TYP.
BICYCLE/PEDESTRIAN LANE
PERMISSIBLE DIRECTIONAL SIGN
SIDEWALK

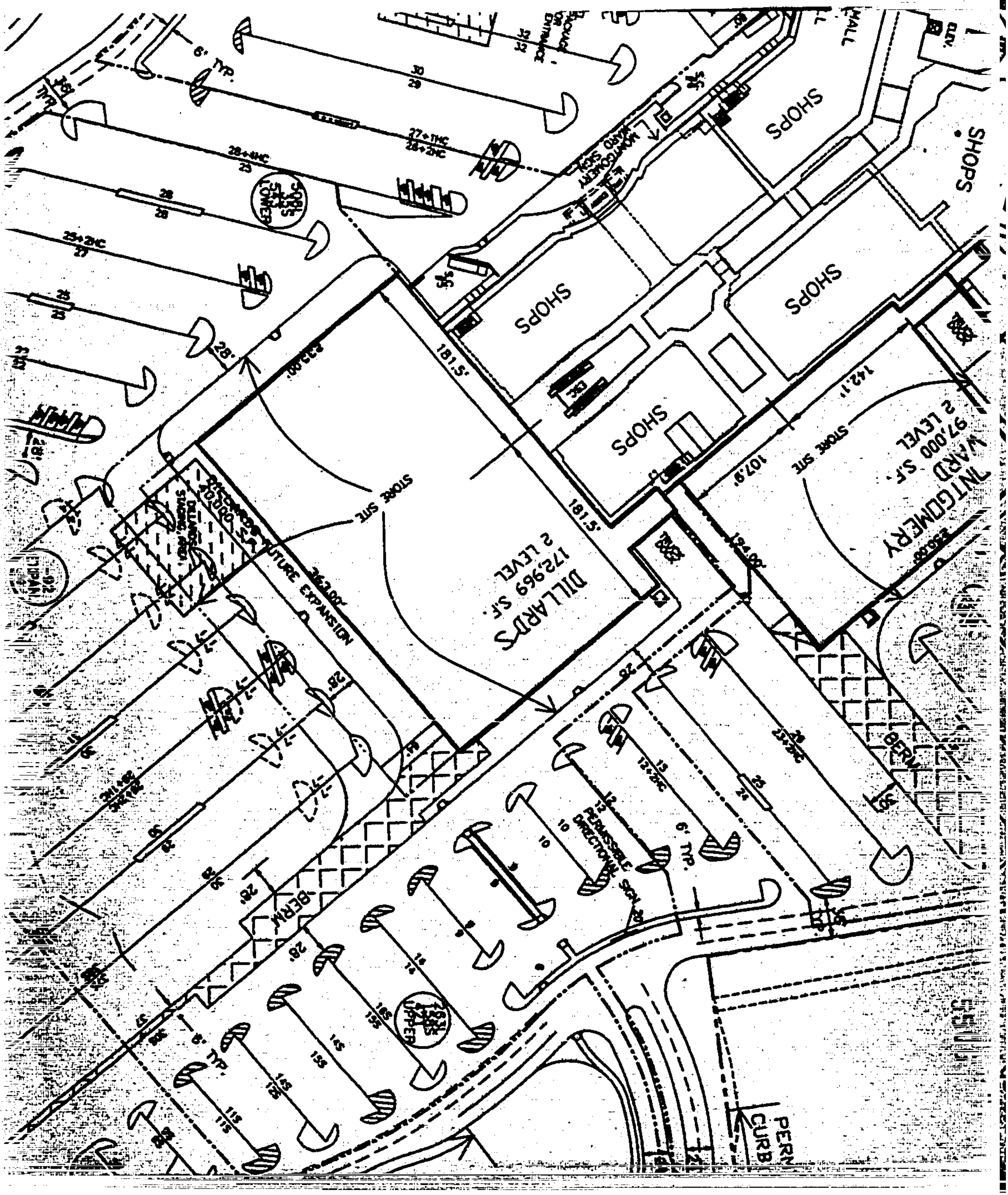

C-1
(COUNTY)
PERMISSIBLE MONUMENT SIGN
(PROPOSED)
SEVEN BAR LOOP ROAD
LANDSCAPE SETBACK
15' TYP.
36' TYP.
POND
16' TYP.
(SMALL CARS)
6' TYP.
24' TYP.
PERMISSIBLE DIRECTIONAL SIGN
6' SIDEWALK
WARD T.B.A.
9,000 S.F.
150.00'
60.00'
PROPOSED PNM SUB-STATION
0.47 ACRES
135.61'
5' TYP.
30'
28'
BERM
SIDEWALK
PERMISSIBLE CURB-CUT AREA
ENTERTAINMENT/
CINEMA
100,800 S.F.
2 LEVEL
210
240



[illegible]	[illegible]	[illegible] MISC. SITE UPDATE
EX-3	1/21/95	UPDATED FOLEY'S EXPANSION PARKING & TOTALS
EX-4	7/18/95	ADDED PERMISSIBLE CURB CUTS
EX-5	8/1/95	UPDATED FOLEYS FOOTPRINT/PARKING & TOTALS
EX-6	8/18/95	UPDATE PARKING & TOTALS
EX-7	11/9/95	UPDATE TRACTS & TOTALS
EX-8	12/6/95	MISC. SITE UPDATE
EX-9	12/14/95	MISC. SITE UPDATE


COORS BY-PASS ROAD
-95 EXPAN
PER CURB
LEGEND
PROJECT BOUNDARY
EASEMENT AND LANDSCAPE SETBACK LINE
LANE DIVISION LINE
PARKING ROW TOTAL - STD. SPACE (9' X 18')
SMALL CAR SPACE (8' X 16')
HANDICAPPED SPACE (13' X 18')
PAINTED END ISLAND - ALL OTHER ISLANDS ARE CURBED AS PER DETAIL THIS SHEET
PARKING FIELD TOTAL AT ELEVATION OF LOWER MALL ENTRANCE
PARKING FIELD TOTAL AT ELEVATION OF UPPER MALL ENTRANCE
SIGNALIZED INTERSECTION
HANDICAP PARKING SYMBOL
BERM
OVERHEAD POWER LINE


38,022 FUTURE EXPANSION
STORE SITE
SHOPS
SHOPS
408.00'
P.B.A.
30'
28'
154'
164'
J.C. PENNEY
121,656 S.F.
2 LEVEL
STORE SITE
318.00'
-140
EXPAN.
40,000 S.F. 1 LEVEL
FUTURE EXPANSION
12' BICYCLE/PEDESTRIAN WAY
BERM
PERMISSIBLE SIGN
DIRECTIONAL
PERMISSIBLE
MONUMENT SIGN
PERMISSIBLE
CUT AREA
MAX.
RACT C-8
1.02 ACRES
FOR CURBED AND
PAINTED ISLAND
TYPICAL DIMENSIONS
SEE DETAIL THIS SHEET.
TRACT C-7
1.17 ACRES
35' TYP.
LANDSCAPE
SETBACK
PERMISSIBLE
CURB CUT AREA
3 MAX.
TRACT C-6
1.28 ACRES
TRACT C-5
1.39 ACRES
24' TYP.
12'



SHOPS
SHOPS
SHOPS
SHOPS
SHOPS
DILLARD'S
172,969 S.F.
2 LEVEL
STORE SITE
STORE SITE
FUTURE EXPANSION
WARD
97,000 S.F.
2 LEVEL
181.5'
181.5'
142.1'
107.9'
184.00'
362.00'
BERM
BERM
6' TYP.
6' TYP.
PERMISSIBLE DIRECTIONAL SIGN
MALL
28'

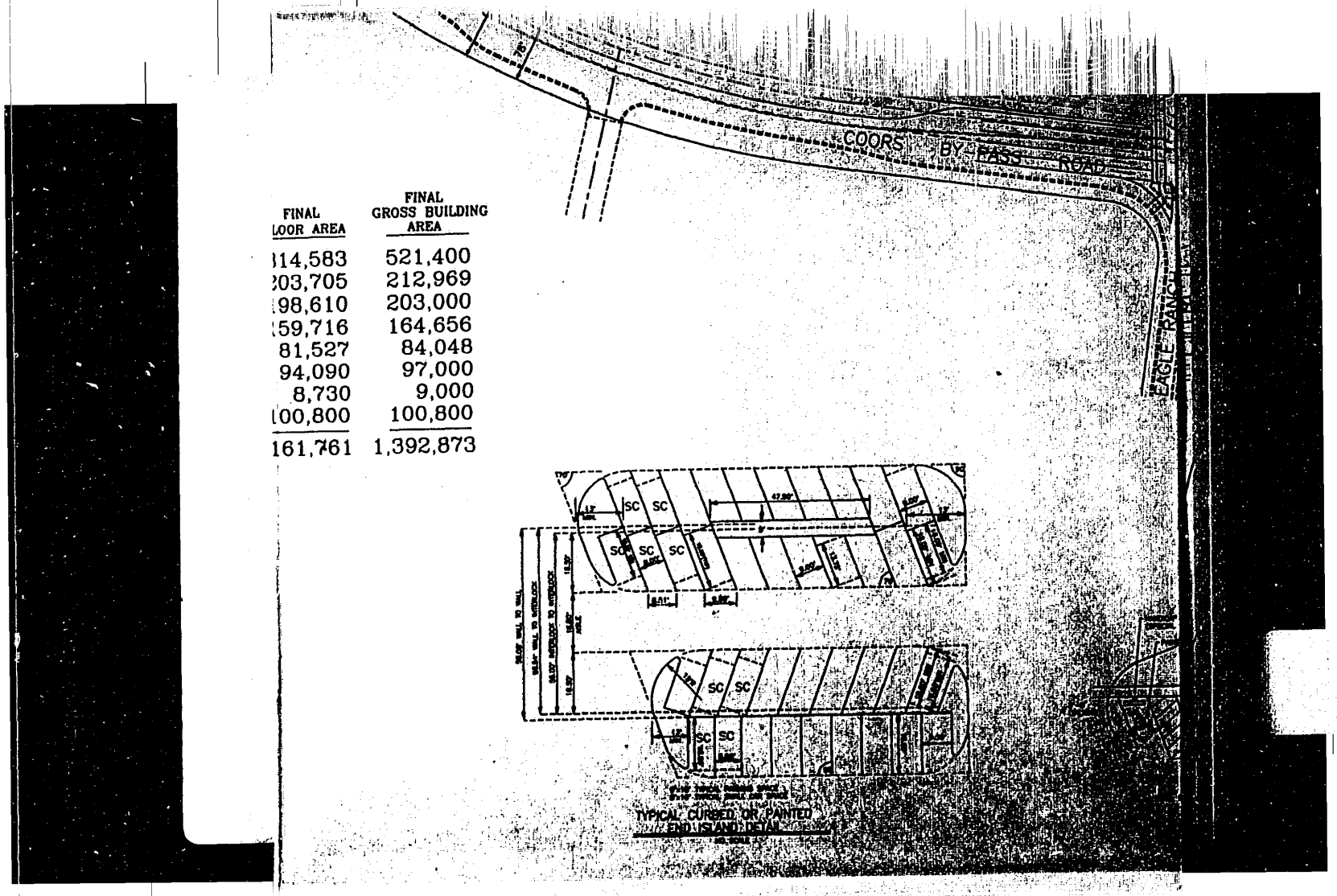
PERMISSIBLE CURB CUT
TRACT C-2
1.11 ACRES
TRACT C-1
1.79 ACRES
40'
TYP.
PYLON SIGN
SSIBLE
UT AREA
30'R
TYP.
CORRALES ROAD

NOTES:

BUILDING	GROSS BUILDING AREA	INITIAL PLANNED FLOOR AREA	EXPANSION GROSS BUILDING AREA	EXPANSION FLOOR AREA
MALL	521,400	514,583	------	------
DILLARD	172,969	165,305	40,000	38,400
FOLEYS	164,978	161,348	38,022	37,262
J.C. PENNEY	124,656	120,916	40,000	38,800
MERVYNS	84,048	81,527	------	------
MONT. WARDS	97,000	94,090	------	------
WARDS T.B.A.	9,000	8,370	------	------
ENTER. CENTER	100,800	100,800	------	------
	1,274,851	1,046,939	118,022	114,462

PARKING	RATIO	REQUIRED	PROVIDED
PHASE I	5.0	5235	5741
PHASE II	4.6	5344	5414

TRACT	INITAL PARKING PROVIDED PHASE I COUNT/RATIO	INITAL PARKING PROVIDED PHASE II COUNT/RATIO
DILLARD	1049/6.35	957/4.69
FOLEYS	1009/6.25	914/4.60
J.C. PENNEY	881/7.28	741/4.64
MERVYNS	881/4.67	------
MONT. WARDS	878/4.66	------
DEVELOPER	1943/4.68	------



FINAL LOOR AREA	FINAL GROSS BUILDING AREA
114,583	521,400
203,705	212,969
198,610	203,000
159,716	164,656
81,527	84,048
94,090	97,000
8,730	9,000
100,800	100,800
161,761	1,392,873

ROAD
POND

SIMON

SIMON DEVELOPMENT COMPANY, INC.

MERCHANTS PLAZA P.O. BOX 7033
INDIANAPOLIS, IN 46207
(317) 636-1600

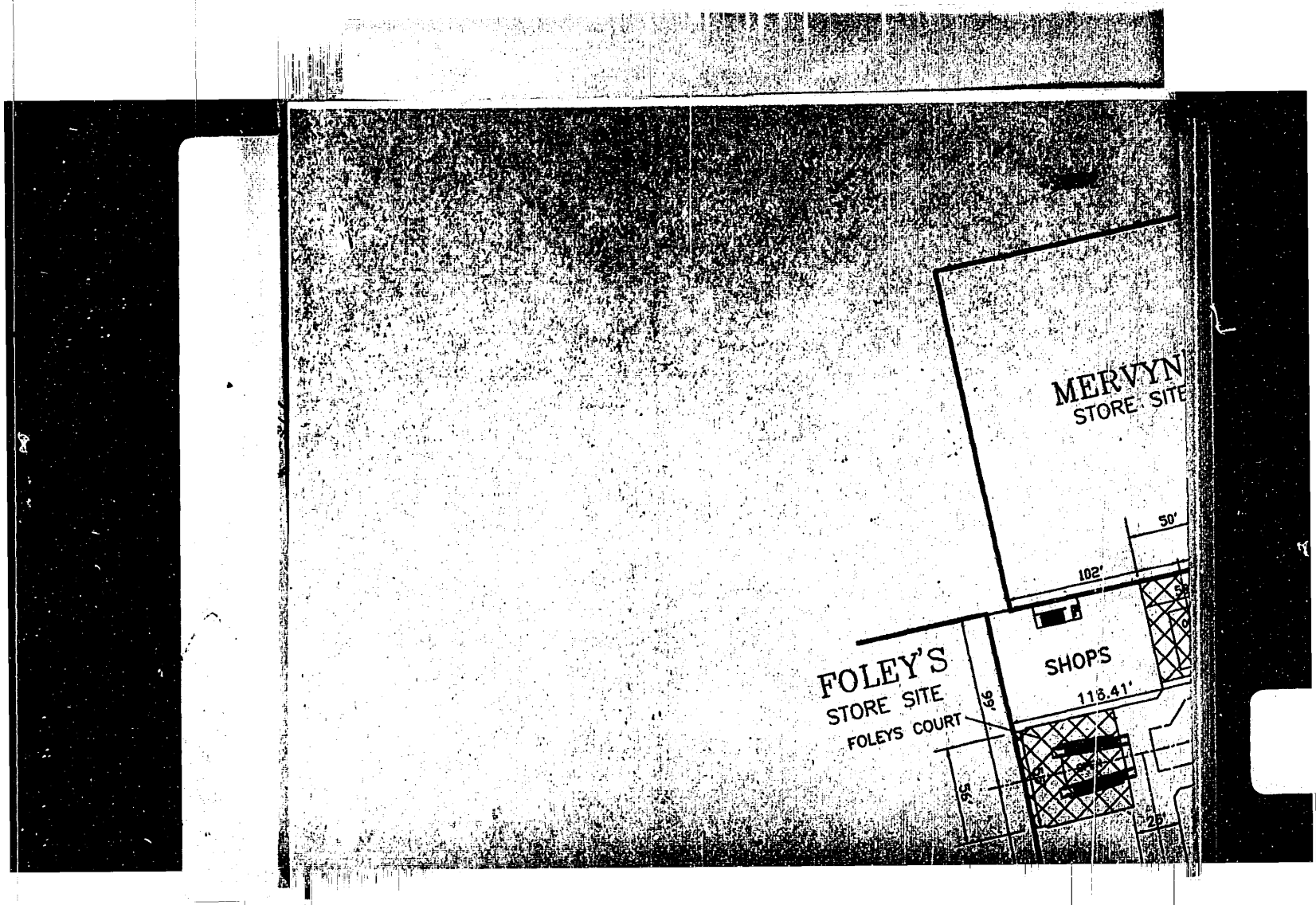
PROJECT COTTONWOOD MALL

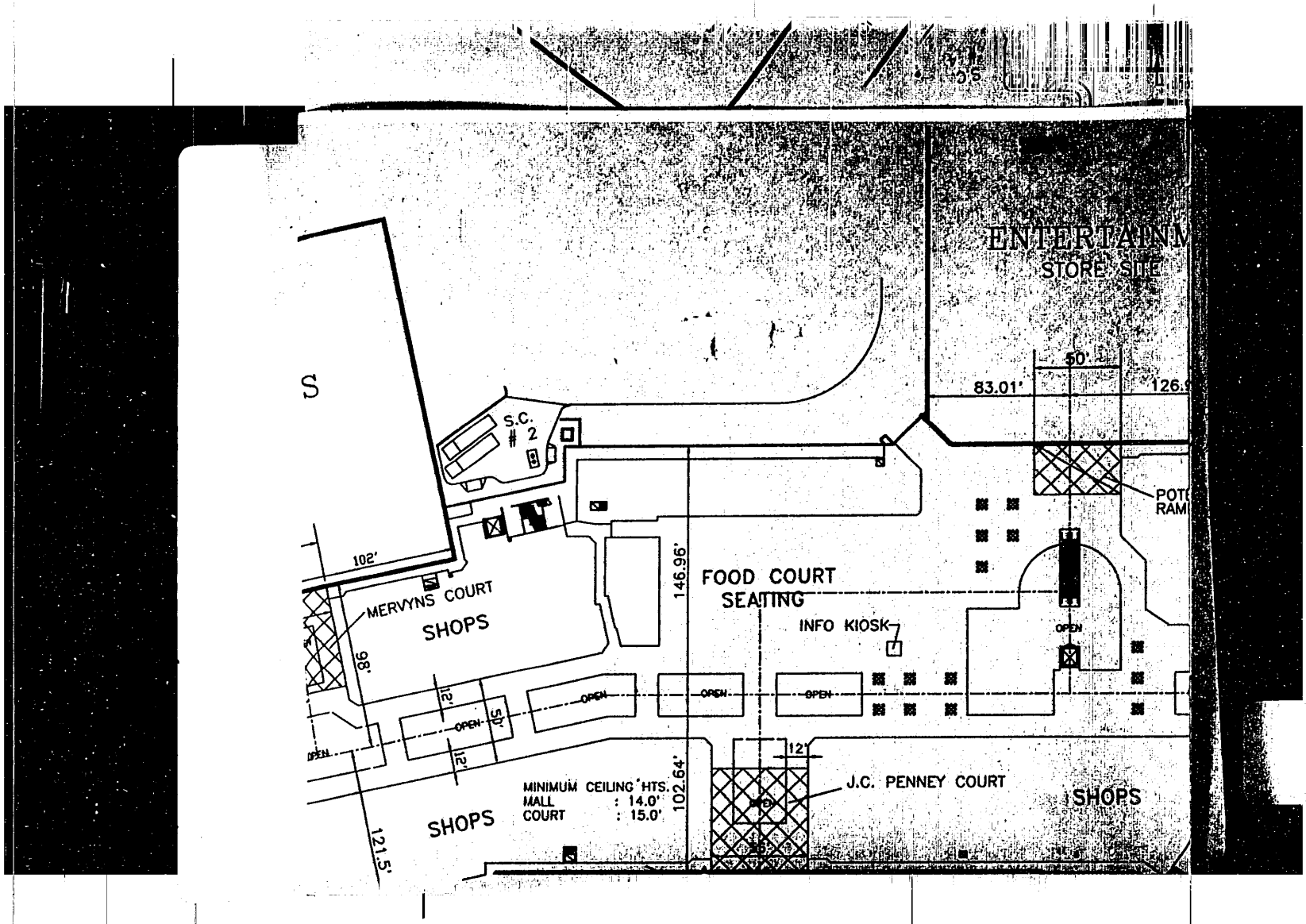
LOCATION ALBUQUERQUE NM.

DESCRIPTION EXHIBIT B

DRAWN WOODS	PART NAME G:\ACAD\0549\EX\9	DATE 5/17/9
REV.	PLAN NAME	SCALE 1"=100
CHECKED	CODE EX	NUMBER 9
DATE		

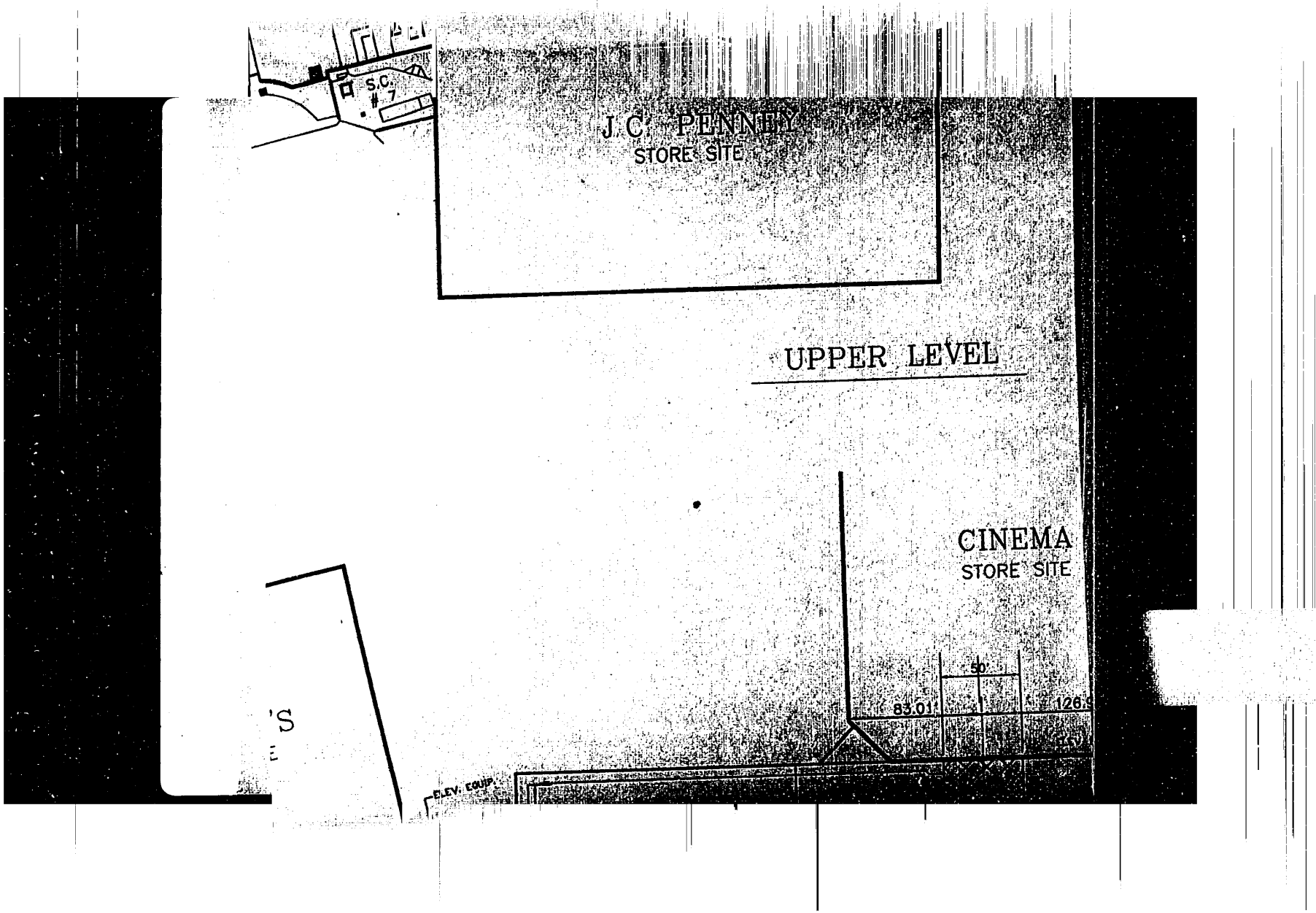
Exhibit B


MERVYN
STORE SITE
50'
102'
FOLEY'S
STORE SITE
FOLEYS COURT
SHOP'S
115.41'
99'
56'
25'


ENTERTAINM
STORE SITE
S
S.C.
2
83.01'
50'
126.
POTT
RAM
102'
MERVYNS COURT
SHOPS
98'
146.96'
FOOD COURT
SEATING
INFO KIOSK
OPEN
OPEN
OPEN
OPEN
OPEN
12'
50'
12'
OPEN
12'
J.C. PENNEY COURT
SHOPS
MINIMUM CEILING HTS.
MALL : 14.0'
COURT : 15.0'
102.64'
SHOPS
121.5'

MONTGOMERY WARD
STORE SITE
SHOPS
MONT. WARD COURT
SHOPS
TRUCK DOCK
119.21'
131.79'
142'
107.9'
50'
39'
ENT

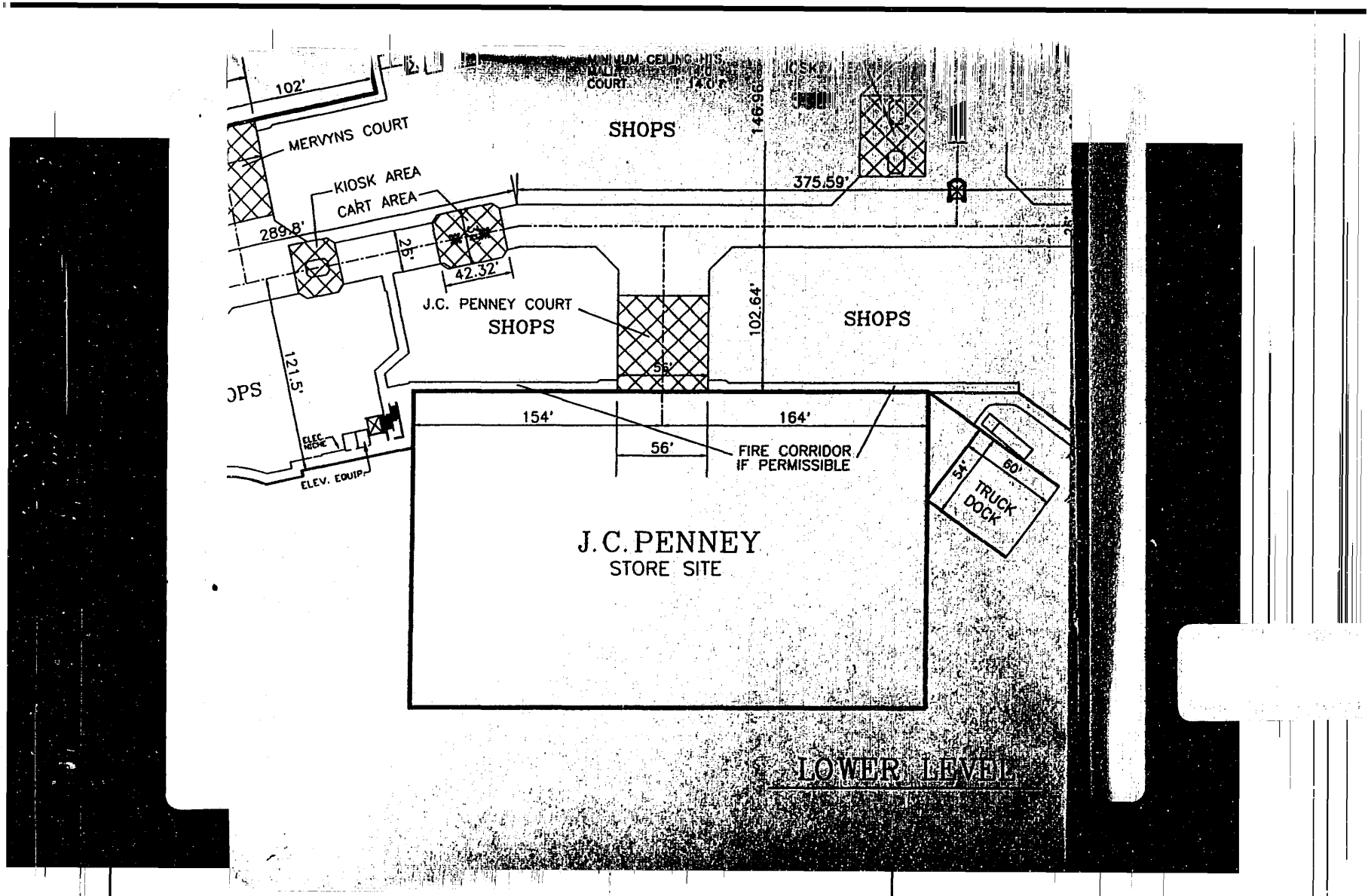
REVISIONS
DESCRIPTION

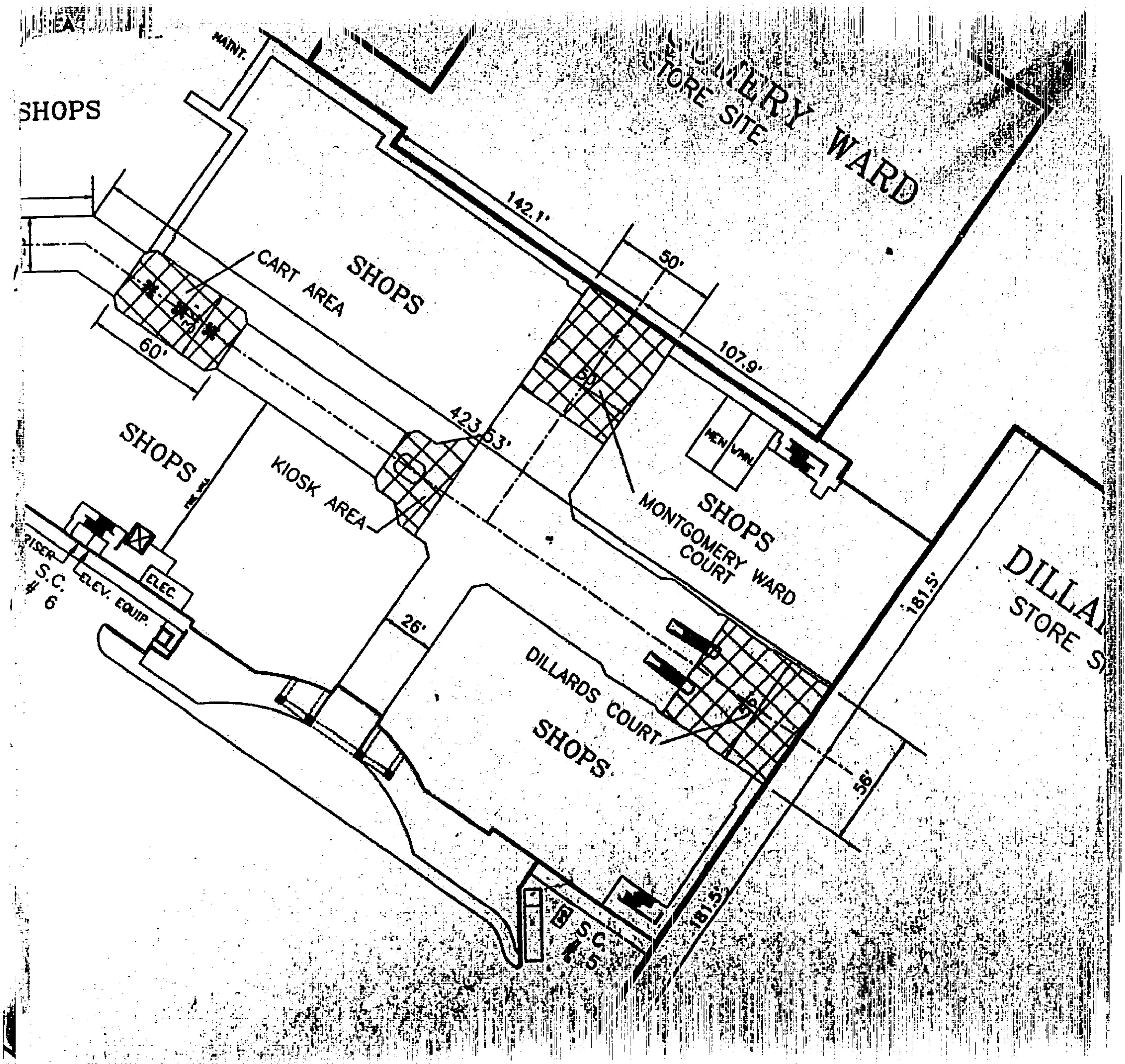

S.C.
#7
J.C. PENNEY
STORE SITE
UPPER LEVEL
CINEMA
STORE SITE
50'
83.01'
126.9'
ELEV. EQUIP.

181.5'
56'
OLLARDS COURT

NOTES:

FOLEY'S
STORE SITE
FOLEYS COURT
99'
99'
56'
SHOPS


102'
MERVYNS COURT
SHOPS
146.96'
KIOSK AREA
CART AREA
375.59'
289.8'
20'
42.32'
J.C. PENNEY COURT
SHOPS
102.64'
SHOPS
121.5'
56'
154'
164'
56'
FIRE CORRIDOR
IF PERMISSIBLE
54'
60'
TRUCK
DOCK
ELEC. NICHE
ELEV. EQUIP.
J.C. PENNEY
STORE SITE
LOWER LEVEL


SHOPS
MAINT.
MONTGOMERY WARD
STORE SITE
142.1'
CART AREA
SHOPS
50'
60'
107.9'
423.53'
SHOPS
KIOSK AREA
MEN
WMN
SHOPS
MONTGOMERY WARD
COURT
RISER
S.C.
6
ELEV. EQUIP.
ELEC.
26'
DILLARDS COURT
SHOPS
181.5'
DILLA
STORE S
56'
S.C.
5
181.5'

RD'S
TE

SIMON

SIMON DEVELOPMENT COMPANY, I

MERCHANTS PLAZA P.O. BOX 7033
INDIANAPOLIS, IN 46207
(317) 636-1600

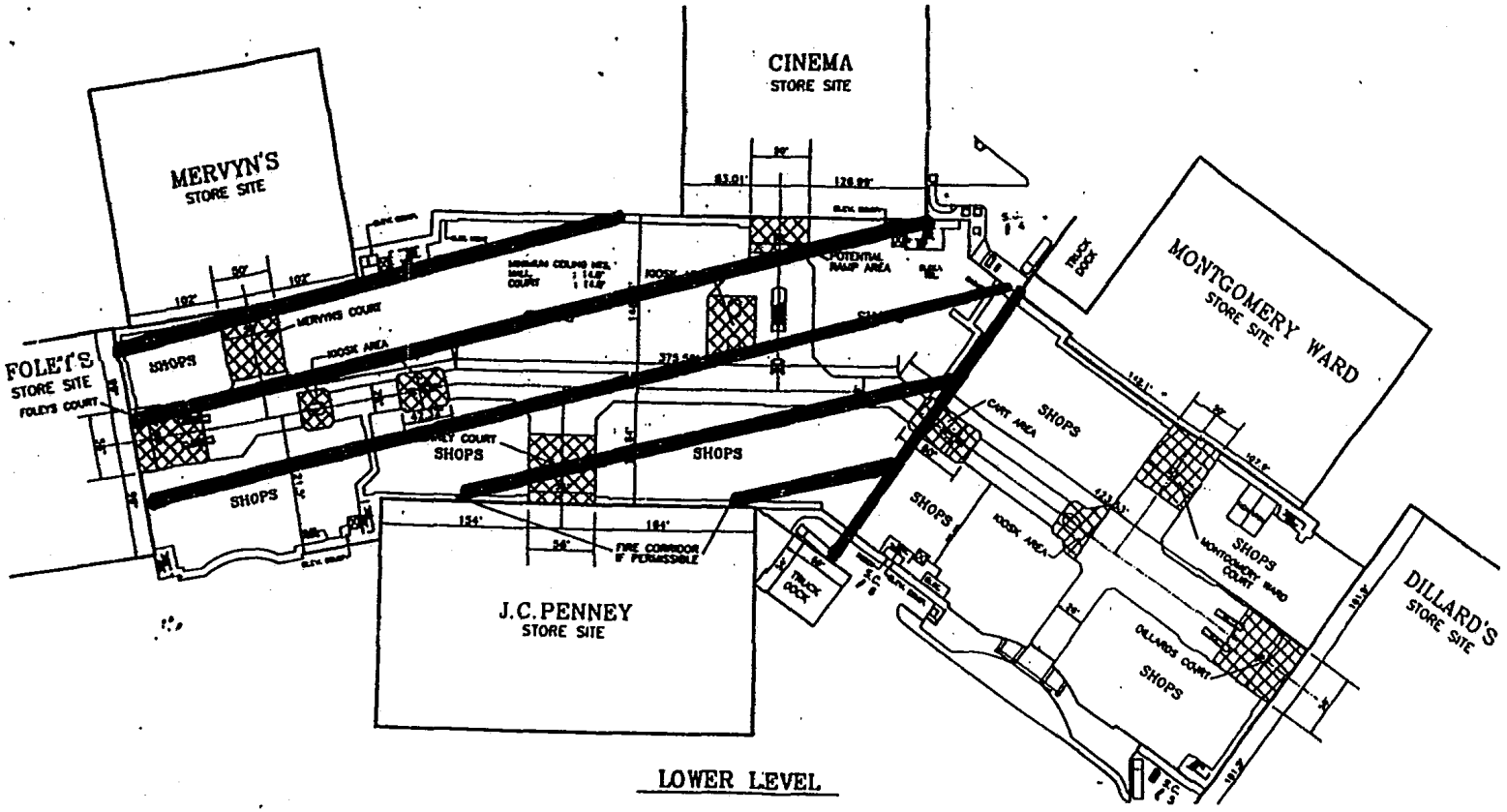
PROJECT COTTONWOOD MALL

LOCATION ALBUQUERQUE NM.

DESCRIPTION EXHIBIT B

DRAWN	PART NAME	DATE
WOODS	G:\ACAD\0549\EX\9\2	5/13
REV.	PLAN NAME	SC
CHECKED	CODE	NUMBE

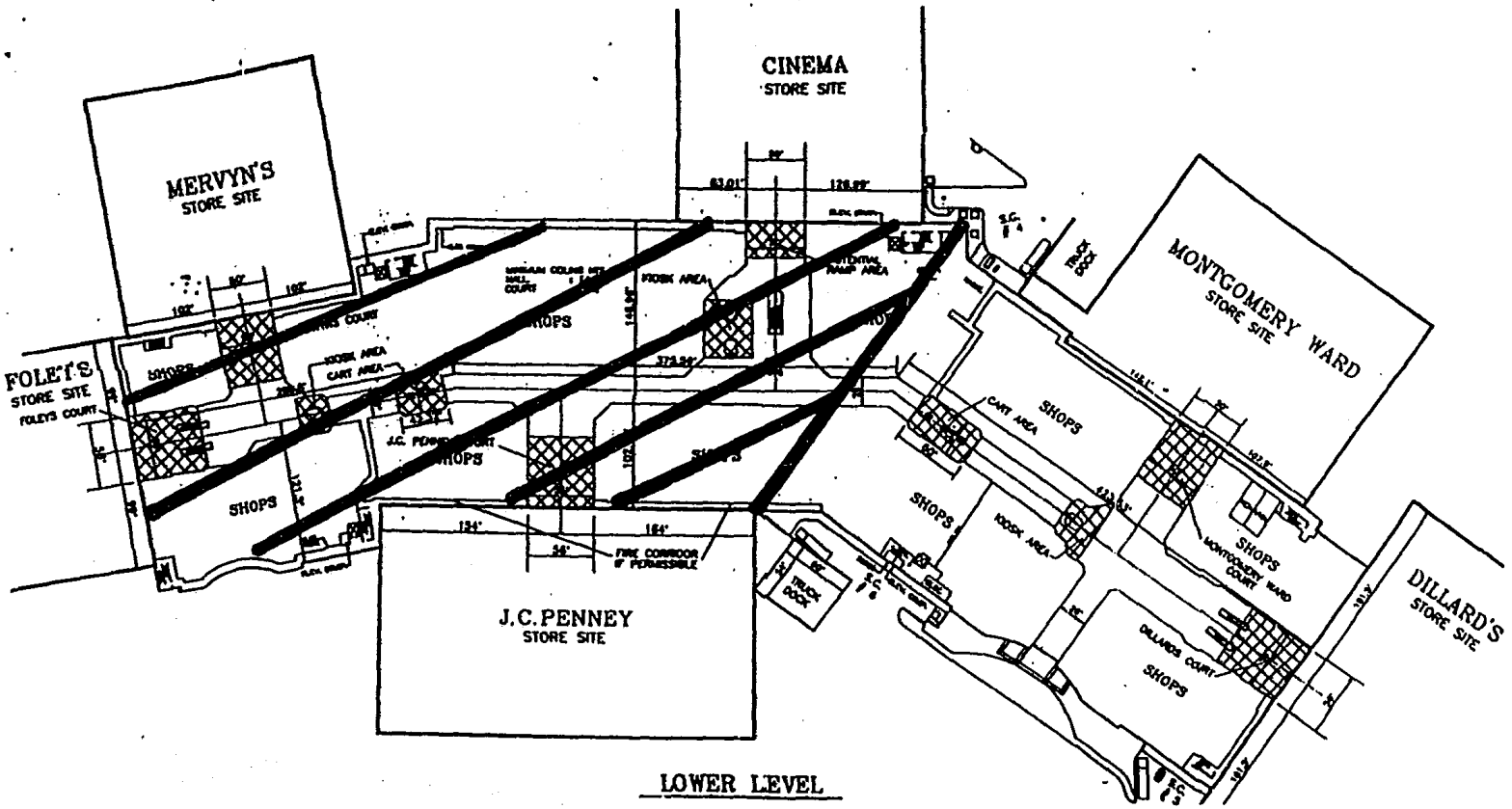
EXHIBIT B-1



LOWER LEVEL

JC Penney & Mervyn's

552L

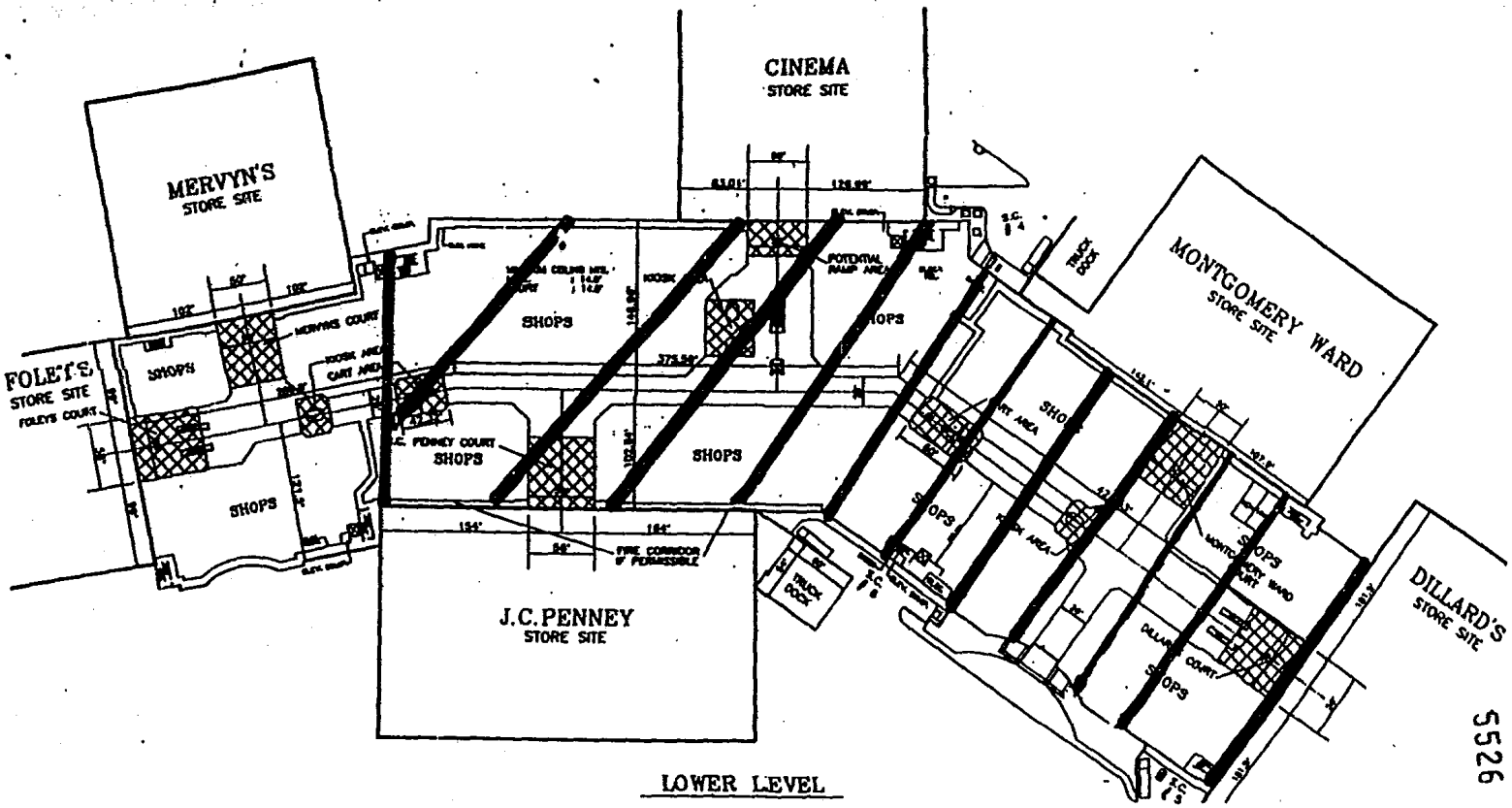


LOWER LEVEL

Foley's & Mervyn's

Foley's & J.C. Penney

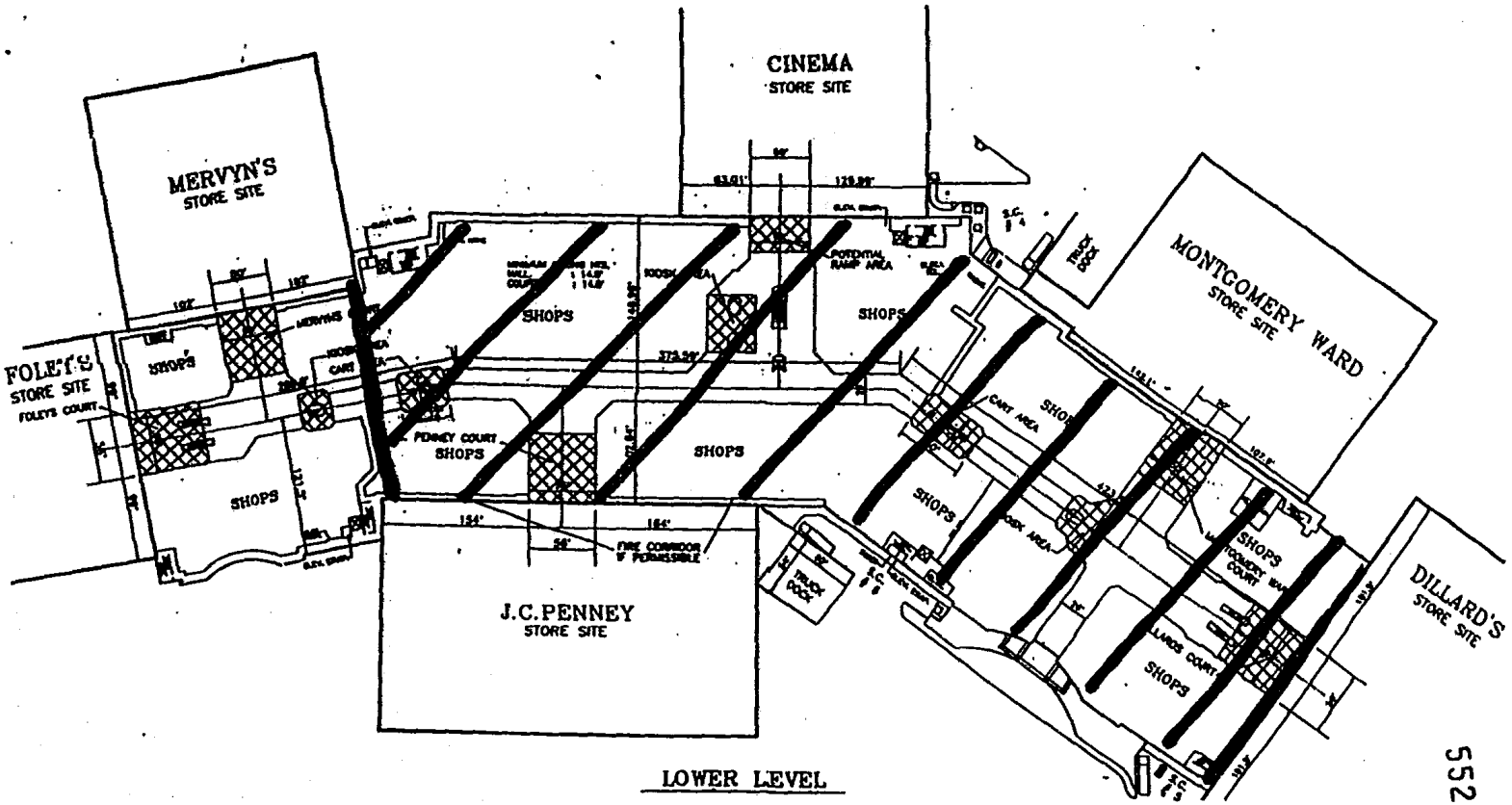
5523



LOWER LEVEL

J.C. Penney & Dillard

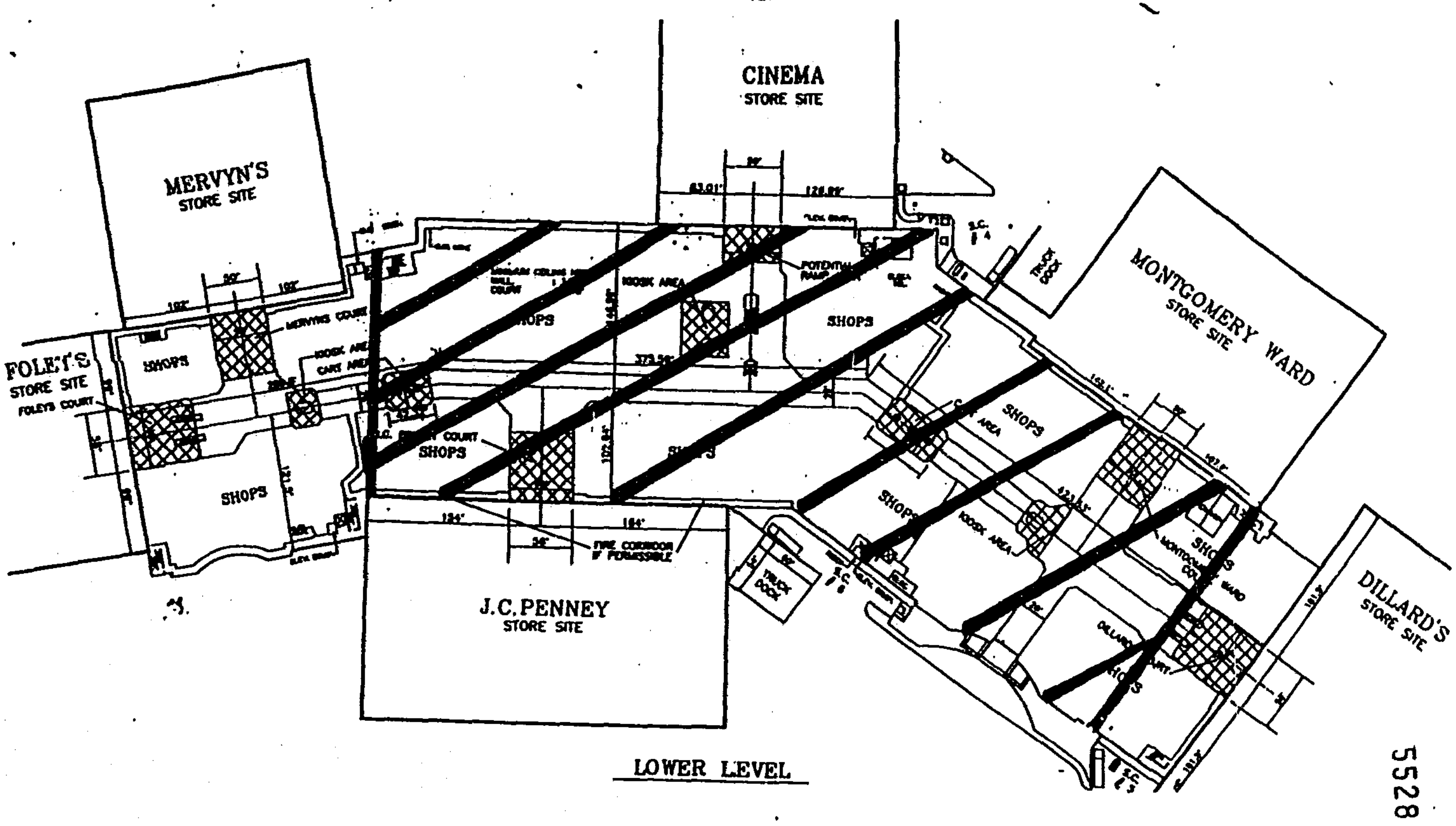
5526



LOWER LEVEL

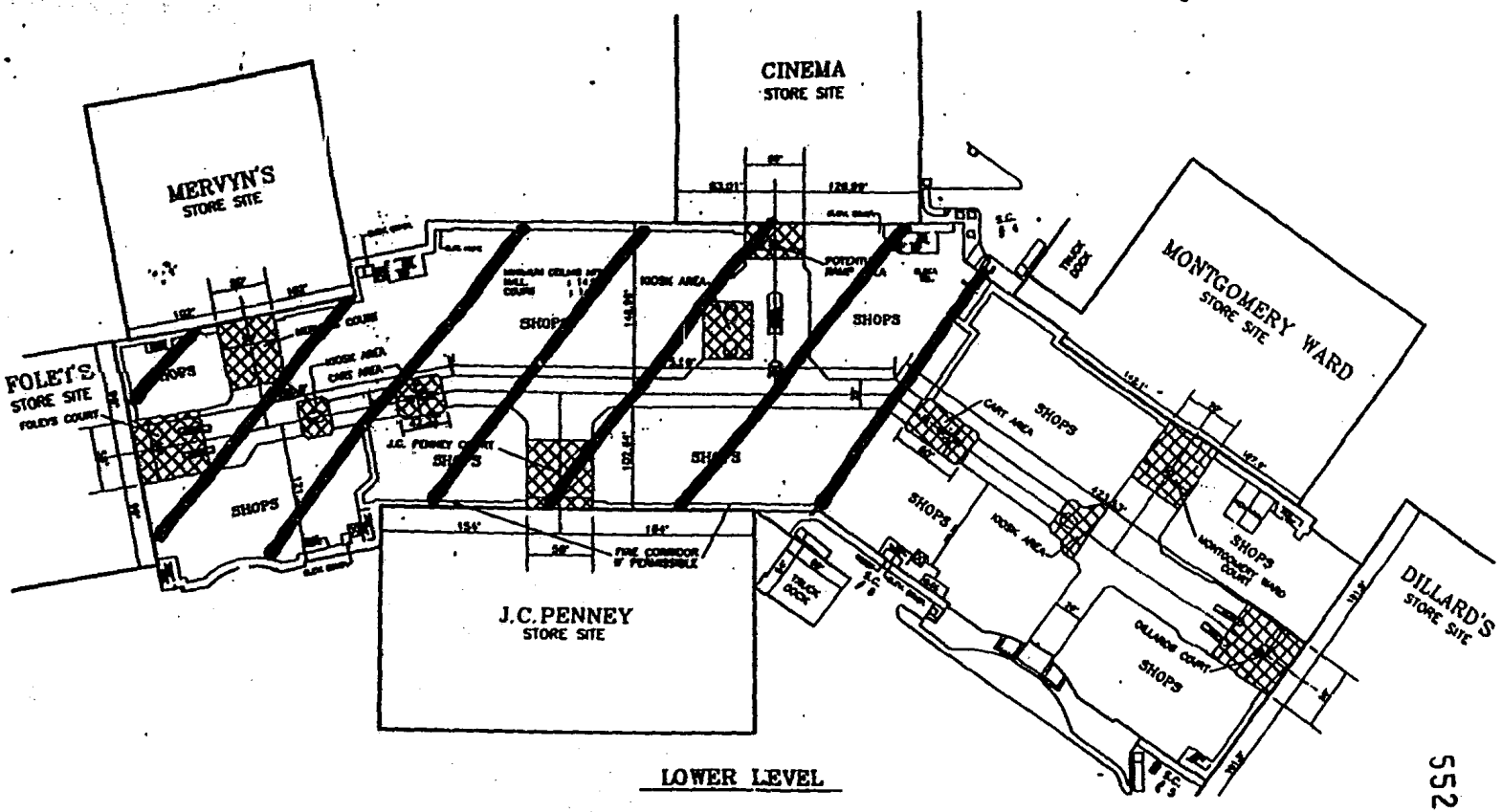
5527

— Dillard, Montgomery Ward & JC Penney—



LOWER LEVEL

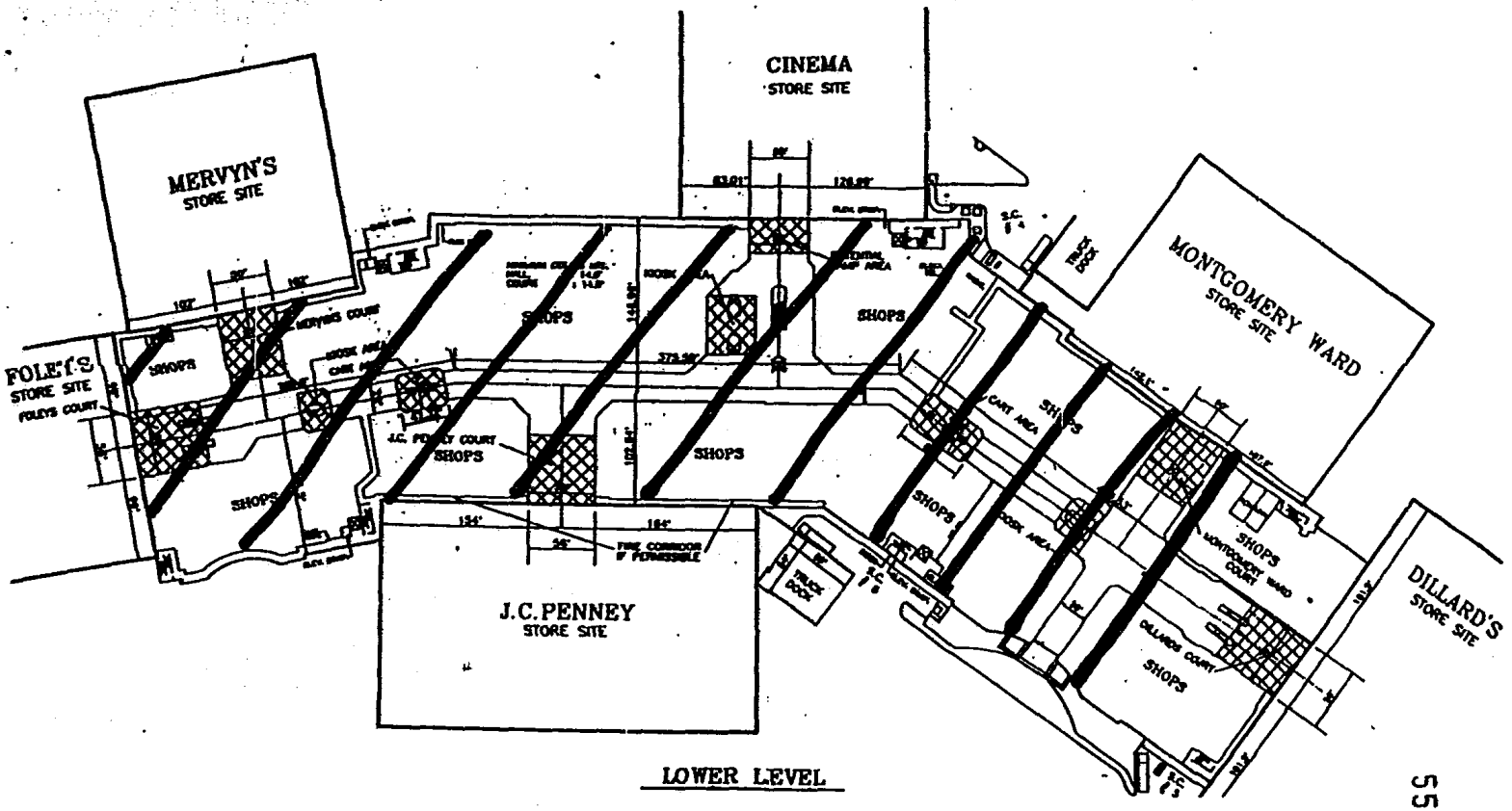
J.C. Penney & Montgomery Ward



LOWER LEVEL

5529

— Mervyn's, Foley's & JC Penney —

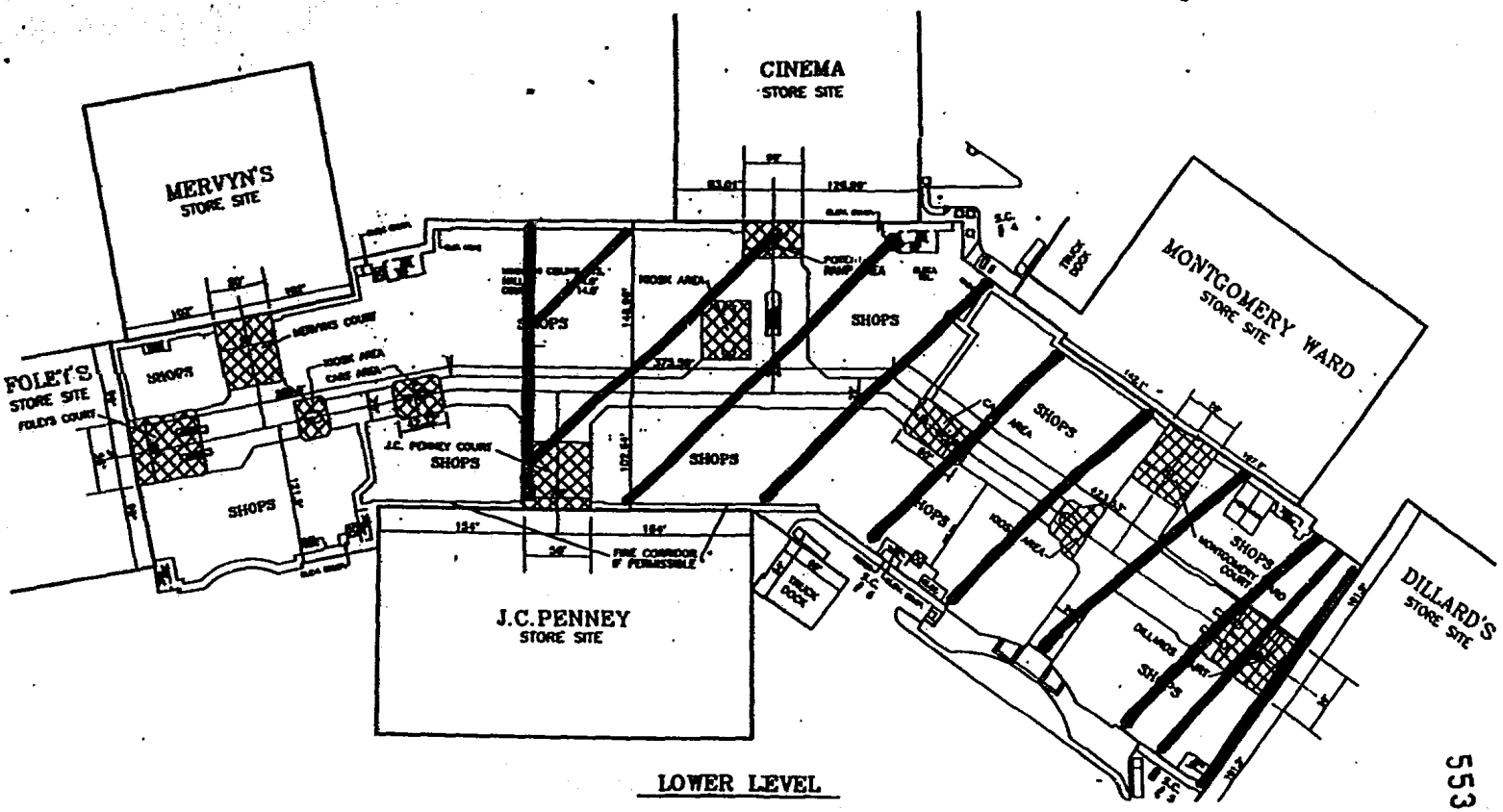


LOWER LEVEL

Montgomery Ward & Mervyn's

Montgomery Ward & Foley's

5530

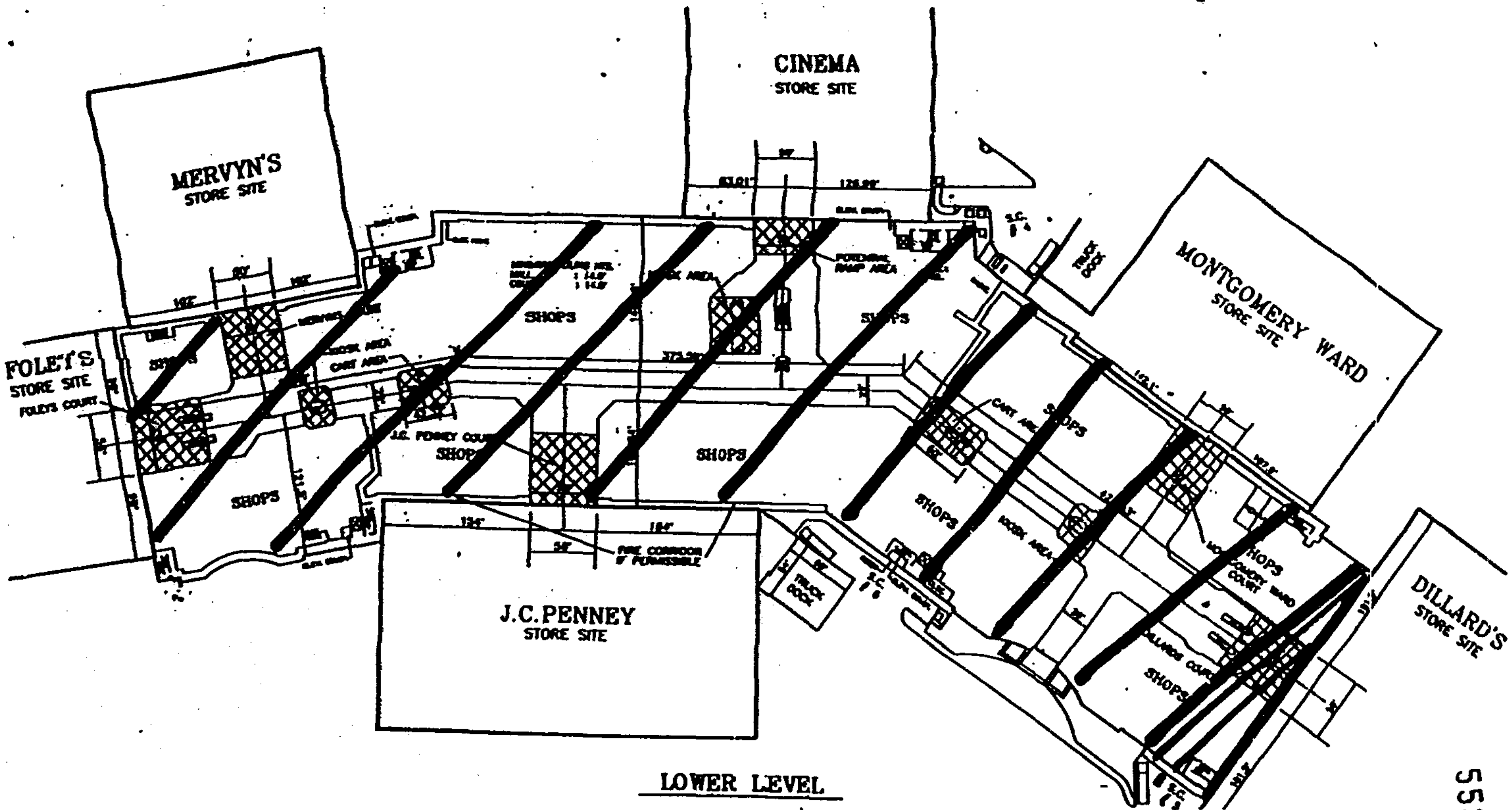


LOWER LEVEL

Dillard & Montgomery Ward

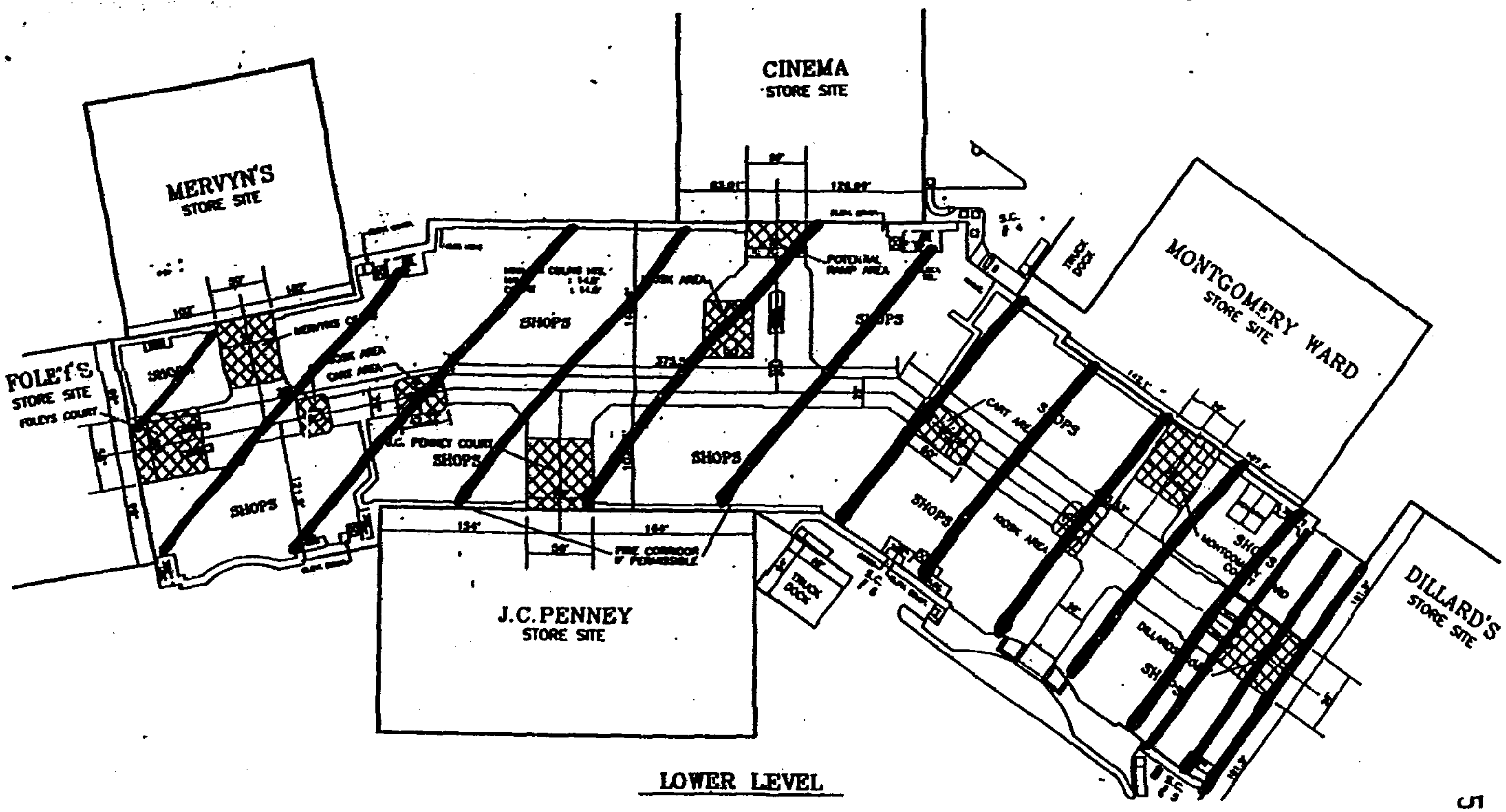
5531

5532



LOWER LEVEL

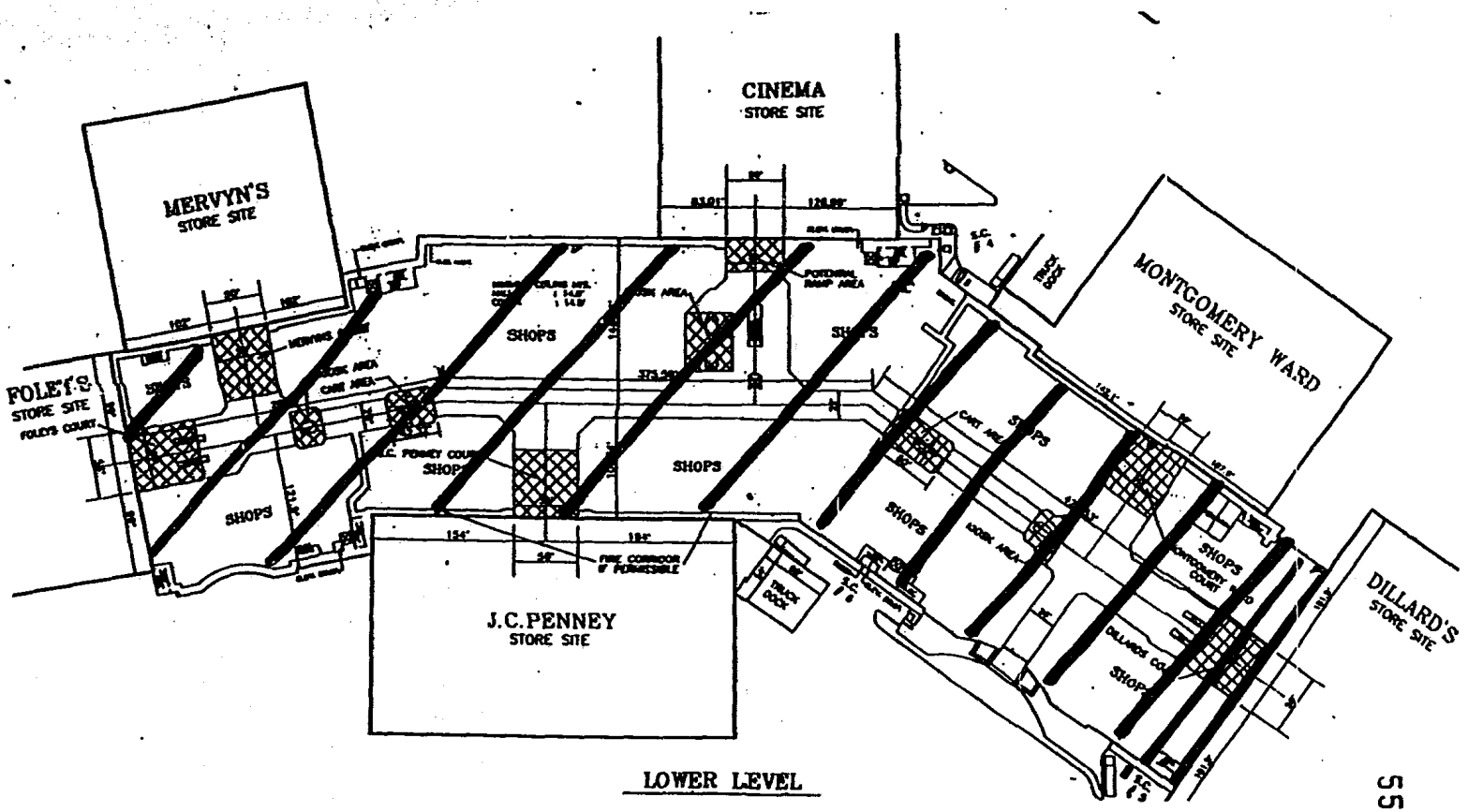
Foley's & Dillard



LOWER LEVEL

Dillard & Mervyn's

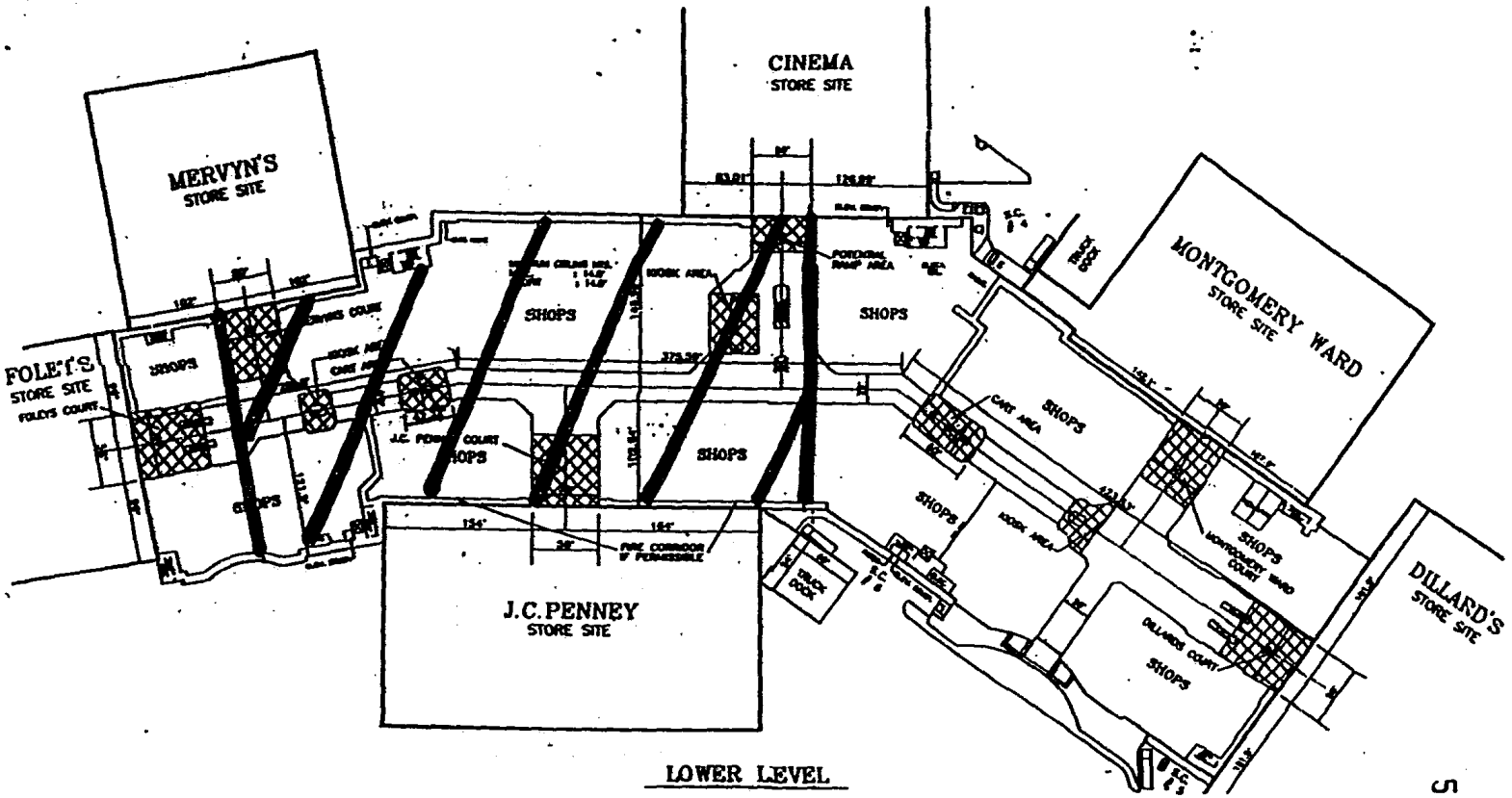
5533



LOWER LEVEL

—Dillard, Montgomery Ward & Mervyn's —

5534



LOWER LEVEL

5535

JC Penney

5536

Dillard or Ward

LOWER LEVEL

Foley's or Mervyn's

Improvements	Height maximum
Developer Improvements	Seventy One (71) feet
Major Improvements	Sixty (60) feet, but subject to all federal, state and local laws, rules and regulations relating to building heights.

EXHIBIT C

SIGN CRITERIA

These criteria have been established for the purpose of assuring an outstanding shopping center. Conformance will be strictly enforced; and any installed non-conforming or unapproved signs must be brought into conformance at the expense of the Occupant installing or causing to be installed such signs.

The Developer is to administer and interpret the criteria, but is not empowered to authorize any departure without written approval of the Parties.

A. GENERAL REQUIREMENTS.

1. Each Occupant of the Developer Mall Stores shall be required to submit or cause to be submitted to the Developer for approval before fabrication at least three (3) copies of detailed drawings covering the location, size, layout, design and color of the proposed sign, including all letters and/or graphics.

2. No signs shall be permitted on the exterior of the Developer Mall Stores; provided, however, those Developer Mall Stores which abut on the Enclosed Mall, and have an exterior customer entrance, shall be permitted to have exterior signs in a size approved by the Parties provided that such signs conform to the provisions of this Exhibit D, and shall be in a location immediately adjacent to such entrance, which location shall be approved by the Developer.

3. All permits for signs and their installation shall be obtained by the Occupant or its representative.

4. Occupant shall be responsible for the fulfillment of all requirements and specifications.

5. Project monument signs shall be located as shown on Exhibit B.

B. DESIGN REQUIREMENTS FOR DEVELOPER MALL STORES.

1. Signs shall be permitted only within the sign areas as designated by the Developer.

2. The size of all Occupant's signs shall be limited as set forth below. The scale and concept of the Enclosed Mall requires the use of signs which are not larger than necessary to be legible from within the Enclosed Mall. Occupant's signs shall be located within the limits of its storefront and shall not project more than six inches beyond the storefront and shall conform to the following proportionate height criteria:

30-foot storefront	18" capitals	12" body
30 to 60-foot storefront	24" capitals	18" body
60-foot and over storefront	30" capitals	24" body

3. Signs in the Enclosed Mall shall be limited in length to 70% of Occupant's frontage on the Enclosed Mall and shall in no case exceed a length of thirty feet.

4. Signs may be perpendicular to the face of the building if approved by Developer and shall not exceed 3' x 4' exclusive of canopy signs. The height of the sign letters shall not exceed two (2) feet.

5. No signs of any sort shall be permitted on canopy roofs or building roofs.

6. Communication of signs shall not include the product sold except as a part of Occupant's trade name or insignia, and except for signs in the food court.

7. No sign, or any portion thereof, may project above the parapet or top of wall upon which it is mounted.

8. No sign shall exceed a maximum brightness of 100 foot lamberts.

C. GENERAL SPECIFICATIONS.

1. Painted lettering will not be permitted, except as specified under Article D-2.

2. Flashing, moving or audible signs or elements thereof will not be permitted.

3. Pylon or pole signs will not be permitted, except as shown on the Plot Plan, Exhibit B.

4. All electrical signs and all components thereof shall bear the UL label, and their installation must comply with all local building and electrical codes.

5. No exposed conduit, tubing or raceways will be permitted, except for exposed tubing in neon signs which are approved by Developer. Occupant shall be fully responsible for the maintenance and repair of said neon sign. In the event that said neon sign becomes broken or dysfunctional in any fashion, it shall be removed immediately by the Occupant until such time as the sign is repaired and fully functional. Any temporary signage erected while Occupant's neon sign is being repaired shall conform to the provisions of this Exhibit D.

6. All conductors, transformers and other equipment shall be concealed.

7. Electrical service as well as a time clock to all signs shall be on Occupant's meter and not be part of Common Area construction or Exterior Common Area Maintenance Costs.

8. All metal signs, bolts, fastening and clips shall be of hot dipped galvanized iron, stainless steel, aluminum, brass or bronze, and no black iron materials of any type will be permitted.

9. All exterior letters or signs exposed to the weather shall be mounted with at least 3/4" clearance from the building wall to permit proper dirt and water drainage.

10. Location of all openings for conduit and sleeves in sign panels of building walls shall be indicated by the sign contractor on drawings submitted to the Developer. Sign

contractor shall install same in strict accordance with the approved drawings.

11. No signmaker's labels or other identification will be permitted on the exposed surface of signs, except those required by local ordinance which shall be in an inconspicuous location.

12. Except within the Enclosed Mall, all penetrations of the building structure required for sign installation shall be neatly sealed in a watertight condition.

13. Each Occupant shall repair or cause its sign contractor to repair any damage to any work caused by such contractor's work.

14. Each Occupant shall be fully responsible for the operations of Occupant's sign contractors.

D. MISCELLANEOUS REQUIREMENTS.

1. Each Occupant will be permitted to place upon each entrance of its demised premises not more than 144 square inches of gold leaf or decal application lettering, not to exceed two inches (2") in height, indicating hours of business, emergency telephone numbers, etc.

2. Each Occupant who has a non-customer door for receiving merchandise may have uniformly applied on said door, in two inches (2") high block letters, the Occupant's name and address. Where more than one Occupant uses the same door, each name and address shall be applied.

3. Occupant may install on the Enclosed Mall front, only if required by the U.S. Post Office, the numbers only for the street address in exact location stipulated by the Project Architect. Size, type and color of the numbers shall be as stipulated by the Project Architect.

4. Floor signs, such as inserts into terrazzo, etc., shall be permitted within Developer Mall Stores' lease line in their store fronts, if approved by the Project Architect. Notwithstanding the foregoing, floor signs are to be removed and the floor materials replaced to match the adjacent floor by Developer when the Occupant vacates the leased space.

5. Paper signs and/or stickers utilized as signs, and signs of a temporary nature, of whatever composition or material, will not be permitted.

E. DEPARTMENT STORES.

1. The provisions of this Exhibit D, except as otherwise expressly provided in this Section E, shall not be applicable to the building identification signs on the Stores of the Majors. It is understood and agreed that each Major may have its usual and customary exterior signs which identify the name under which such Major does business on its building(s), as the same exist on similar buildings operated from time to time by such Major in the State of New Mexico. In all events, there shall be no pylon or roof-top exterior signs, exterior signs which are flashing, moving or audible, or painted

or paper exterior signs, and all such exterior identification signs of the Majors shall otherwise comply with the applicable general specifications contained in Section C hereof. For purposes of this Section E, the term "exterior" shall include the exterior of the Majors' respective Stores within or outside of the Enclosed Mall.

2. Nothing herein shall be deemed to prohibit the Majors from having exterior identification signs attached to the exterior facades of any mechanical penthouse upon its respective Store, provided that such sign(s) shall not extend higher than the top of such penthouse.

3. Exterior signs for any third party user in a Major's Store with an exterior entrance utilizing no less than 10,000 square feet of Floor Area in a Major's Store shall comply with the terms and conditions of Section C of this Exhibit D and of Article 18 of the REA.

4. Notwithstanding anything contained herein to the contrary, the Occupant of the entertainment/theatre complex shown on Exhibit B shall be authorized to utilize the pylon sign as set forth in Section 18.3 of the REA in addition to all signage which is available (interior and exterior) to the Majors.

F. ADMINISTRATION.

In the event any conflict of interpretation between any Occupant of the Developer Mall Stores and the Developer as to the application of these criteria cannot be satisfactorily resolved, the Developer shall submit the design to the Project Architect, whose decision shall be final and binding upon the Occupant.

RULES AND REGULATIONS

A. Common Area.

1. The surface of the Automobile Parking Area and sidewalks shall be maintained level, smooth and evenly covered with the type of surfacing material originally installed thereon, or such substitute thereof as shall be in all respects comparable thereto in quality, appearance and durability and be approved by the Parties.

2. All papers, debris, filth and refuse shall be regularly removed from the Shopping Center, and paved areas shall be washed or thoroughly swept as required. All sweeping shall be at intervals before the Stores shall be open for business to the public, using motor driven parking lot vacuum cleaning vehicles where feasible.

3. All trash and rubbish containers located in the Common Area for the use of Permittees shall be emptied as necessary, but not less often than daily, and shall be washed at intervals sufficient to maintain the same in a clean condition.

4. All landscaping shall be properly maintained, including removal of dead plants, weeds and foreign matter and such replanting and replacement as the occasion may require, so as to keep the same in first-class thriving condition.

5. All hard-surfaced markings shall be inspected at regular intervals and promptly repainted as the same shall become unsightly or indistinct from wear and tear, or other cause.

6. All storm drain catch basins shall be cleaned on a schedule sufficient to maintain all storm drain Lines in a free-flowing condition and all mechanical equipment related to storm drain and sanitary sewer facilities shall be regularly inspected and kept in proper working order.

7. All asphalt paving shall be inspected at regular intervals and maintained in a first-class condition.

8. All stairways shall be: (a) swept and washed at intervals sufficient to maintain the same in a clean condition; (b) inspected at regular intervals; and (c) promptly repaired upon the occurrence of any irregularities or worn portions thereof.

9. All glass, including skylights, plate glass and/or glass-enclosed devices shall be cleaned at intervals sufficient to maintain the same in a clean condition.

10. All surface utility facilities servicing the Common Area, including, but not by way of limitation, hose bibbs, standpipes, sprinklers and domestic water lines, shall be inspected at regular intervals and promptly repaired or replaced, as the occasion may require, upon the occurrence of any defect or malfunctioning.

11. All Common Area amenities, benches, and institutional, directional, traffic and other signs shall be inspected at regular intervals, maintained in a clean and attractive surface condition and promptly repaired or

replaced upon the occurrence of any defects or irregularities thereto.

12. All lamps shall be inspected at regular intervals and all lamps shall be promptly replaced when no longer properly functioning.

13. The improvements on and to the Common Area shall be repaired or replaced with materials, apparatus and facilities of equal or greater quality to the quality of the materials, apparatus and facilities originally installed.

14. The operator(s) of the Common Area shall use reasonable efforts to require their respective Permittees to comply with all regulations with respect to the Common Area, including, but not by way of limitation, posted speed limits, directional markings and parking stall markings.

15. With respect to all mechanical and electrical facilities and systems serving the Enclosed Mall, including, but not by way of limitation, the lighting facilities, vertical transportation facilities, heating, ventilating and cooling systems, and actuated or manually operated doors, Developer shall (a) inspect the same at regular intervals, (b) promptly repair the same upon the occurrence of any failure, defect or malfunctioning, and (c) as respects the said heating, ventilating and cooling systems, maintain the same so as to comply with the performance specifications approved concurrently herewith.

16. The heating, ventilating and cooling systems for the Enclosed Mall shall be operated in accordance with the provisions of the REA including these Rules and Regulations, at least during the same hours of the same days that the heating, ventilating and cooling systems serving the Stores of the Majors shall be operating.

17. All surfaces of the Enclosed Mall which are painted or otherwise finished shall be cleaned at regular intervals, and repainted or otherwise refinished as needed.

18. All of the Common Area shall be maintained free from any obstructions not required, including the prohibition of the sale, solicitation, storage or display of merchandise or services outside the Floor Area, except for limited areas within the Enclosed Mall in connection with Shopping Center-wide promotions first approved by all Parties in their reasonable discretion, and except for kiosks (includes pushcarts) and outdoor selling areas, if any, as shown on the Plot Plan (Exhibit B) attached to the REA. There shall be no kiosks or outdoor selling areas except as shown on said Plot Plan.

19. No shopping carts shall be permitted in or upon the Enclosed Mall, the Automobile Parking Area or any other Common Area in the Shopping Center, and each Occupant shall, if it provides shopping carts for its customers, erect at or within its lease line a barrier or other device preventing such carts from entering into the Enclosed Mall or other Common Area, and shall be responsible for the removal of such shopping carts from the Common Area and proper storage of such shopping carts on its own premises.

B. Floor Area and General.

1. All Occupants of the Developer Mall Stores shall have their window displays and all Occupants shall have their exterior signs adequately illuminated continuously during such hours as the Enclosed Mall is required to be Operated.

2. All Floor Area, including vestibules, entrances and returns, doors, fixtures, windows and plate glass shall be maintained in a safe, neat and clean condition.

3. All trash, refuse and waste materials shall be regularly removed from the premises of each Occupant of the Shopping Center, and until removal shall be stored (a) in adequate containers, which such containers shall be located so as not to be visible to the general public shopping in the Shopping Center, and (b) so as not to constitute any health or fire hazard or nuisance to any Occupant.

4. No portion of the Shopping Center shall be used for lodging purposes.

5. No advertising medium shall be utilized which can be heard or experienced outside of the Floor Area, including, without limiting the generality of the foregoing, flashing lights, searchlights, loudspeakers, phonographs, organs, radios or television.

6. No use shall be made of the Shopping Center or any portion or portions thereof which would (a) violate any law, ordinance or regulation, (b) constitute a nuisance, (c) constitute an extra-hazardous use, or (d) violate, suspend or void any policy or policies of insurance on the Stores.

7. Developer shall use its best efforts to require Occupants of the Developer Tract to cause all trucks servicing the retail facilities on the Developer Tract to load and unload prior to the hours of the Shopping Center opening for business to the general public, except in designated areas as shown on Exhibit B to the REA.

C. Conduct of Persons.

The Parties hereto do hereby establish the following rules and regulations for the use of roadways, Access Roads, walkways, the Enclosed Mall, Automobile Parking Areas, and other common facilities provided for the use of Permittees:

1. No person shall use any roadway, Access Road, walkway or the Enclosed Mall, except as a means of egress from or ingress to any Floor Area and Automobile Parking Areas within the Shopping Center, or adjacent public streets. Such use shall be in an orderly manner, in accordance with the directional or other traffic signs or guides. Roadways and Access Roads shall not be used at a speed in excess of fifteen (15) miles per hour and shall not be used for parking or stopping except for the immediate loading or unloading of passengers. No walkway or Enclosed Mall shall be used for other than pedestrian travel or such other uses as are permitted in the REA or have been approved by the Parties.

2. No person shall use any Automobile Parking Areas except for the parking of motor vehicles during the period of time such person or the occupants of such vehicle are customers or business invitees of the establishments within the Shopping Center. All motor vehicles shall be parked in an orderly manner within the painted lines defining the individual parking places. During peak periods of business activity, reasonable limitations may be imposed by the unanimous agreement of the Parties as to the length of time for parking use. Such limitations may be made in specified areas.

3. No person shall use any utility area, truck court or other area reserved for use in connection with the conduct of business, except for the specific purpose for which permission to use such area is given.

4. No employee of any business in the Shopping Center shall use any area for motor vehicle parking, except the area or areas specifically designated for employee parking for the particular period of time such use is to be made. No employer shall designate any area for employee parking, except such area or areas as are designated in writing by the Parties.

5. Unless the following prohibitions are not permitted by law, no person, without the written consent of the Parties, shall in or on any part of the Common Area:

   a. Vend, peddle or solicit orders for sale or distribution of any merchandise, device, service, periodical, book, pamphlet or other matter whatsoever.

   b. Exhibit any sign, placard, banner, notice or other written material.

   c. Distribute any circular, booklet, handbill, placard or other material.

   d. Solicit membership in any organization, group or association or contribution for any purpose.

   e. Parade, rally, patrol, picket, demonstrate or engage in any conduct that might tend to interfere with or impede the use of any of the Common Area by any Permittee, create a disturbance, attract attention or harass, annoy, disparage or be detrimental to the interest of any of the retail establishments within the Shopping Center.

   f. Throw, discard or deposit any paper, glass or extraneous matter of any kind, except in designated receptacles, or create litter or hazards of any kind.

   g. Use any sound-making device of any kind or create or produce in any manner noise or sound that is annoying, unpleasant, or distasteful to Occupants or Permittees.

   h. Deface, damage or demolish any sign, light standard or fixture, landscaping material or other improvement within the Shopping Center, or the

property of customers, business invitees or employees situated within the Shopping Center.

The listing of specific items as being prohibited is not intended to be exclusive, but to indicate in general the manner in which the right to use the Common Area solely as a means of access and convenience in shopping at the retail establishments in the Shopping Center is limited and controlled by the Parties in the Shopping Center.

Each Party shall have the right to remove or exclude from or to restrain (or take legal action to do so) any unauthorized person from, or from coming upon or into, the Common Area or its Tract or any portion thereof, and prohibit, abate and recover damages from such person arising from any unauthorized act, whether or not such act is in express violation of the prohibitions listed above. In so acting such Party is not the agent of other Parties or Occupants of the Shopping Center, unless expressly authorized or directed to do so by such Party or Occupant in writing, and each Party shall protect, indemnify, defend and hold harmless all other Parties from and against any and all claims, demands, liabilities, actions, suits, loss, cost, damage and expense arising or resulting, directly or indirectly, from any such acts or action done or taken by the indemnifying Party.

D. Miscellaneous.

Nothing contained in these Rules and Regulations shall modify any duty or obligation of Developer relative to maintenance and repair of the Common Area.

GUARANTY

For value received, in consideration of the sum of One Dollar ($1.00) paid by THE MAY DEPARTMENT STORES COMPANY ("May"), DILLARD DEPARTMENT STORES, INC. ("Dillard"), MERVYN'S ("Mervyn's"), J.C. PENNEY PROPERTIES, INC. ("Penney") and SIMON PROPERTY GROUP, INC. ("Developer") to the undersigned, receipt and sufficiency of whereof are hereby acknowledged, and in consideration for, and as an inducement to May, Dillard, Mervyn's, Penney and Developer to enter into the foregoing REA with 998 MONROE CORPORATION ("MW") and others, and for Developer to enter into a certain First Supplemental Agreement with MW as referred to in the REA, the undersigned, for itself and its successors in interest and assigns, hereby absolutely and unconditionally guarantees to May, Dillard, Mervyn's, Penney and Developer, their respective successors and assigns, the full and faithful payment, performance and observance by MW of the obligations, covenants, conditions and agreements therein provided, to be paid, performed and observed by MW under the REA and the First Supplemental Agreement, together with the payment of all reasonable costs, attorneys' fees and other expenses incurred by May, Dillard, Mervyn's, Penney and Developer in enforcing such performance and observance, without requiring any notice of non-payment, non-performance or non-observance or proof of notice or demand whereby to charge the undersigned therefor, all of which the undersigned hereby expressly waives and expressly agrees that the validity of this Guaranty and the obligations of the undersigned hereunder shall in nowise be terminated, affected or impaired by reason of assertion by May, Dillard, Mervyn's, Penney and Developer against MW of any of the rights or remedies reserved to May, Dillard, Mervyn's, Penney and Developer pursuant to the REA.

The undersigned expressly consents and agrees that May, Dillard, Mervyn's, Penney and Developer may, without notice to the undersigned, modify and amend the REA and First Supplemental Agreement by agreement with MW and grant extensions and concessions to MW in respect thereof without in any manner or to any extent releasing or discharging the liability of the undersigned hereunder, and the undersigned shall be and remain bound and liable hereunder upon the REA and First Supplemental Agreement as the same may be modified, amended or extended from time to time.

The liability of the undersigned hereunder is primary and may be enforced by May, Dillard, Mervyn's, Penney or Developer, jointly or separately and severally, before or after proceeding against MW.

As a further inducement to May, Dillard, Mervyn's, Penney and Developer to enter into the REA and in consideration thereof, the undersigned covenants and agrees that in any action or proceeding brought by May, Dillard, Mervyn's Penney or Developer against the undersigned on account of this Guaranty, the undersigned shall and does hereby waive trial by jury.

The undersigned hereby waives notice of acceptance of this Guaranty.

Dated:_____, 1995.

MONTGOMERY WARD & CO., INCORPORATED,
an Illinois corporation

By:_____
_____, _____

Attest:

_____
Assistant Secretary

EXHIBIT F

GUARANTY 5949

For value received, in consideration of the sum of One Dollar ($1.00) paid by THE MAY DEPARTMENT STORES COMPANY ("May"), 998 MONROE CORPORATION ("Ward"), DILLARD DEPARTMENT STORES, INC. ("Dillard"), MERVYN'S ("Mervyn's) and SIMON PROPERTY GROUP, L.P. ("Developer") to the undersigned, receipt whereof is hereby acknowledged, and in consideration for, and as an inducement to May, Ward, Dillard, Mervyn's and Developer to enter into the foregoing Construction, Operation and Reciprocal Easement Agreement of even date ("REA") with J.C. PENNEY PROPERTIES, INC. ("Penney Properties"), and for Developer to enter into a certain Allocable Share Agreement with Penney Properties as referred to in said REA, the undersigned, for itself and its successors in interest and assigns, hereby absolutely and unconditionally guarantees to May, Ward, Dillard, Mervyn's and Developer, and their respective successors and assigns, as their interests appear, the full, faithful and timely payment, performance and observance by Penney Properties of the obligations, covenants, conditions and agreements provided to be paid, performed and observed by Penney Properties under said REA and Allocable Share Agreement, together with the payment of all costs, reasonable attorneys' fees and other expenses incurred by May, Ward, Dillard, Mervyn's or Developer in enforcing such payment, performance and observance, without requiring any notice of non-payment, non-performance or non-observance or proof of notice or demand whereby to charge the undersigned therefor, all of which the undersigned hereby expressly waives and the undersigned expressly agrees that the validity of this Guaranty and the obligations of the undersigned hereunder shall in no way be terminated, affected or impaired by reason of assertion by May, Ward, Dillard, Mervyn's or Developer against Penney Properties of any of the rights or remedies reserved to May, Ward, Dillard, Mervyn's and Developer pursuant to said REA.

The undersigned expressly consents and agrees that May, Ward, Dillard, Mervyn's and Developer, without notice to the undersigned, may modify and amend said REA and said Allocable Share Agreement by agreement with Penney Properties and grant extensions and concessions to Penney Properties in respect thereof without in any manner or to any extent releasing or discharging the liability of the undersigned hereunder, and the undersigned shall be and remain bound and liable hereunder upon said REA and Allocable Share Agreement as the same may be modified, amended and extended from time to time.

The liability of the undersigned hereunder is primary and may be enforced by May, Ward, Dillard, Mervyn's or Developer, jointly or separately and severally, before or after proceeding against Penney Properties.

The undersigned hereby waives notice of acceptance of this Guaranty.

Dated:_____, 1995.

J.C. PENNEY COMPANY, INC.

By:_____
Printed:_____
Title:_____

ATTEST:

_____

EXHIBIT G