FIRST AMERICAN TITLE CO. 305-75-2

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AFTER RECORDING RETURN TO:

ALSTON, COURTNAGE, MacAULAY & PROCTOR 1000 SECOND AVENUE, SUITE 3900 SEATTLE, WA 98104-1054 ATTN: MICHAEL S. COURTNAGE

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REQUEST OF____

OPERATION AND EASEMENT AGREEMENT

BETWEEN

DAYTON HUDSON CORPORATION

AND

WINMAR CASCADE, INC.

SKAGIT COUNTY WASHINGTON Real Estate Excise Tex

AUG - 1 1991

Amount Paid \$
Skagit Co. Treasurer
By C. Deputy

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VOL 998 PAGE 422

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TABLE OF CONTENTS

ARTICLE I	
DEFINITIONS	
1.1	and an artist of the contract
1.2	Approving Party Building Area Common Area Floor Area Occupant 2
1.3	Common Area
1.4	Floor Area
1.5	Occupant 2
1.6	Operator 2
1.7	
1.8	Porcon
1.9	Person
	Permittee
	Restaurant
	Shopping Center
	2 <u>Tract</u> 4
1. 13	Butility Lines 4
1001410	
ARTICLE II	······································
EASEMENTS	· <u>·</u> · · · · · <u>· · · · · · · · · · · ·</u>
2.1	Ingress and Egress
2.2	<u>Utilities</u> 5
2.3	Construction, Maintenance and Reconstruction7
2.4	Restriction 8
ARTICLE III	
CONSTRUCTION .	· · · · · · · · · · · · · · · · · · ·
3.1	General Requirements 8
3.2	Common Area
3.3	Building Improvement
ARTICLE IV	· · · · · · · · · · · · · · · · · · ·
MAINTENANCE AN	
4.1	Utility Lines
4.2	Common Area
	Building Improvements
(
ARTICLE V	
	HE SHOPPING CENTER
5.1	<u>Uses</u>
5.2	Lighting
5.3	
5.4	
	Taxes and Assessments
5.6	
	<u>Liens</u> 30
ARTICLE VI	
MISCELLANEOUS	,
6.1	<u>Default</u> 30
· · · · · · · · · · · · · · · · · · ·	
	∕′

1256/054:06/04/91:MSC545

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ARE To

18/5

in the second of		
6.2	<u>Interest</u>	31
6.3	Estoppel Certificate	32
6.4	Notices	32
6.5	Approval Rights	32
6.6	Condemnation	33
6.7	Binding Effect	33
. 6.8	Singular and Plural	33
6.9	Counterparts and Signatures Pages	33
	Negation of Partnership	33
	Not a Public Dedication	34
	Excusable Delays	34
	Severability	34
6.14	Amendments	34
6.15	Captions and Capitalized Terms	34
	Mitigation of Damages	35
	OEA Shall Continue Notwithstanding	•
	Breach	35
6.18	Time	35
	No Waiver	35
	Developer Purchase Right	35
3323		
ARTICLE VII		38
TERM		38
7 1	Term of this OFA	20

EXHIBITS

Exhibit A - Legal Description of Target Tract
Exhibit B - Legal Description of Developer Tract
Exhibit C - Sign
Exhibit X - Site Plan

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1256/054:06/04/91:MSC545

-ii-

VOL 998 PAGE 424

OPERATION AND EASEMENT AGREEMENT

THIS OPERATION AND EASEMENT AGREEMENT ("OEA") is made and entered into as of the lst day of August, 1991, between DAYTON HUDSON CORPORATION, a Minnesota corporation ("Target") and WINMAR CASCADE, INC., a Washington corporation ("Developer").

WITNESSETH

WHEREAS, Target is the owner of a certain tract of land described in Exhibit A attached hereto and identified as the "Target Tract") on Exhibit X (the "Site Plan") attached hereto; and

WHEREAS, Developer is the owner of a certain tract of land described in Exhibit B attached hereto and identified as the "Developer Tract" on the Site Plan; and

WHEREAS, the Target Tract and the Developer Tract (collectively the "Shopping Center" as more particularly hereinafter defined) are contiguous and adjacent as shown on the Site Plan; and

WHEREAS, the signatories hereto intend to develop and operate their respective Tracts in conjunction with each other as integral parts of a retail shopping complex and in order to effectuate the common use and operation thereof they desire to enter into certain covenants and agreements as a part of a general plan, and to grant to each other certain reciprocal easements, in, to, over and across their respective Tracts.

NOW, THEREFORE, in consideration of the premises, the covenants and agreements hereinafter set forth and in furtherance of the parties' understanding, it is agreed as follows:

ARTICLE I DEFINITIONS

1.1 Approving Party. "Approving Party" shall mean the party designated from time to time to make certain decisions and/or give certain approvals pursuant to the terms of this OEA. There shall be one Approving Party representing the Developer Tract and one Approving Party representing the Target Tract. The holder of the Approving Party position shall have the right to assign such position to any other Party owning a Tract within the real estate represented by such position, but if an assignment is not made, then when an Approving Party has sold its last Tract, such Approving Party's position shall automatically be deemed assigned to the Party acquiring the last Tract owned by the transferring

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Approving Party. Developer shall be the initial Approving party for the Developer Tract; Target shall be the initial Approving Party for the Target Tract.

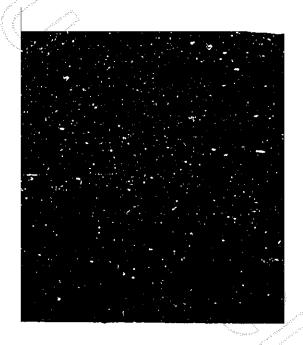
- 1.2 Building Area. "Building Area" shall mean the limited areas of the Shopping Center within which buildings (which for the purpose of this OEA shall include any appurtenant canopies, supports, loading docks, truck ramps and other outward extensions) may be constructed, placed or located.
- "Common Area" shall mean all areas within 1.3 Common Area. the exterior boundaries of the Shopping Center, exclusive of Building Area.
- 1.4 Floor Area. "Floor Area" shall mean the actual number of square feet of space contained on each floor within a building, including any mezzanine or basement space used either for retail sales, retail services or for the storage of merchandise, as measured from the exterior faces of the exterior walls or store front and/or the center line of any common walls; provided, however, that the following area shall not be included in such calculations: mezzanine office space used by the Occupant for administrative purposes and which is not open or accessible to the general public and any space used solely for building utilities or mechanical equipment. Within thirty (30) days of a request, a Party shall certify to the requesting Party the amount of Floor Area applicable to each building on its Tract. If any Party causes an as-built survey to be prepared with respect to any portion of the Shopping Center, such Party shall furnish a copy of the survey to the other Parties for informational purposes only.

During any period of rebuilding, repairing, replacement or reconstruction of a building, the Floor Area of that building shall be deemed to be the same as existing immediately prior to that period. Upon completion of such rebuilding, repairing, replacement or reconstruction, the Party upon whose Tract such building is located, shall cause a new determination of Floor Area for such building to be made in the manner described above, and such determination shall be sent to any Party requesting the same.

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- 1.5 Occupant. "Occupant" shall mean any Person from time to time legally entitled to the use and occupancy of any portion of a building in the Shopping Center under an ownership right or any lease, sublease, license, concession, or other similar agreement.
- 1.6 Operator. "Operator" shall mean the Person designated from time to time by the Approving Parties to maintain and operate the Common Area of the Shopping Center.

VOL 998 98125



- 1.7 Party. "Party" shall mean each signatory hereto and, after compliance with the notice requirements set forth below, their respective successors and assigns who become owners of any portion of the Shopping Center. Each Party shall be liable for the performance of all covenants, obligations and undertakings herein set forth with respect to the portion of the Shopping Center owned by it which accrue during the period of such ownership, and such liability shall continue with respect to any portion transferred until the later of the date on which the notice of transfer set forth below is given or the transfer is completed, at which time the transferring Party's personal liability for obligations shall terminate. A Party transferring all or any portion of its interest in the Shopping Center shall give notice to all other Parties and the Operator of such transfer and shall include therein at least the following information:
 - (i) the name and address of the new Party; and
- (ii) a copy of the legal description of the portion of the Shopping Center transferred.

If a Tract is owned by more than one Person, the Person or Persons holding at least fifty one percent (51%) of the ownership interest in the Tract shall designate one of their number to represent all owners of the Tract and such designated Person shall be deemed the Party for such Tract. Until the notice of transfer is given, the transferring Party shall (for the purpose of this OEA only) be the transferee's agent. Nothing contained herein to the contrary shall affect the existence, priority, validity or enforceability of any lien permitted hereunder which is placed upon the transferred portion of the Shopping Center prior to receipt of the notice.

- 1.8 <u>Person</u>. "Person" shall mean any individual, partnership, firm, association, corporation, trust, or any other form of business or government entity.
- 1.9 <u>Permittee</u>. "Permittee" shall mean all Occupants and the officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, subtenants, and concessionaires of Occupants insofar as their activities relate to the intended use of the Shopping Center. Among others, Persons engaging in the following activities on the Common Area will not be considered to be Permittees:
 - (i) Exhibiting any placard, sign, or notice;
 - (ii) Distributing any circular, handbill, placard, or booklet;
 - (iii) Soliciting memberships or contributions;

-3-

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VOL 998 PAGE 427

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- (iv) Parading, picketing, or demonstrating; and
- (v) Failing to follow regulations relating to the use of the Shopping Center.
- 1.10 <u>Restaurant</u>. "Restaurant" shall mean any operation or business which prepares food on premises and has as its primary business purpose the sale of such food for on premises consumption.
- 1.11 Shopping Center. The Target Tract and the Developer Tract.
- 1.12 <u>Tract</u>. "Tract" shall mean that portion of the Shopping Center owned by a Party.
- 1.13 <u>Utility Lines</u>. "Utility Lines" shall mean those facilities and systems for the transmission of utility services, including drainage and storage of surface water. "Common Utility Lines" shall mean those facilities and systems which are installed to provide the applicable service to at least some of the Building Areas on all of the Developer Tract and the Target Tract or to substantially all of the Common Area. "Separate Utility Lines" shall mean those facilities and systems which are installed to provide the applicable service to Building Areas solely on either the Developer Tract or the Target Tract, or the Common Area located only on one of such Tracts. For the purpose of this OEA, the portion of a Utility Line extending between a Common Utility Line and a building shall be considered a Separate Utility Line.

ARTICLE II EASEMENTS

- 2.1 <u>Ingress and Egress</u>. During the term of this OEA each Party hereby grants and conveys to each other Party for its use and for the use of its Permittees, in common with others entitled to use the same, a non-exclusive easement for the passage and parking of vehicles over and across the parking and driveway areas of the grantor's Tract, as the same may from time to time be constructed and maintained for such use, and for the passage and accommodation of pedestrians over and across the parking, driveways and sidewalk areas of the grantor's Tract, as the same may from time to time be constructed and maintained for such use. Such easement rights shall be subject to the following reservations as well as other provisions contained in this OEA:
- (i) Each Party further reserves the right to close off its portion of the Common Area for such reasonable period of time as may be legally necessary, in the opinion of such Party's counsel, to prevent the acquisition of prescriptive rights by anyone; provided, however, that prior to closing off any portion of the

-4-

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VOL 998 PAGE 428

Common Area, as herein provided, such Party shall give written notice to each other Party of its intention to do so, and shall attempt to coordinate such closing with each other Party so that no unreasonable interference in the passage of pedestrians or vehicles shall occur, and

(ii) Each Party reserves the right at any time and from time to time to exclude and restrain any Person who is not a Permittee from using its portion of the Common Area.

2.2 Utilities.

- (A) Subject to limitations hereinafter contained in this Section 2.2(A), each Party shall grant and convey to each other Party non-exclusive perpetual easements in, to, over, under, along and across those portions of the Common Area located on the grantor's Tract necessary for the installation, operation, flow, passage, use, maintenance, connection, repair, relocation, and removal of Utility Lines serving the grantee's Tract, including but not limited to, sanitary sewers, storm drains, water (fire and domestic), gas, electrical, telephone and communication lines. All Utility Lines shall be underground except:
- (i) with respect to ground mounted electrical transformers at the rear of a building;
- (ii) as may be necessary during periods of construction, reconstruction, repair, or temporary service;
- (iii) as may be required by governmental agencies having jurisdiction; and
 - (iv) as may be required by the provider of such service.

Prior to exercising the right granted herein, the grantee shall first provide the grantor with a written statement describing the need for such easement, shall identify the proposed location of the Utility Line, and shall furnish a certificate of insurance showing that its contractor has obtained the minimum insurance coverage required by Section 5.4(C) hereof. Any Party installing Separate Utility Lines pursuant to the provisions of this subparagraph shall pay all costs and expenses with respect thereto and shall cause all work in connection therewith (including general clean-up and proper surface and/or subsurface restoration) to be completed as quickly as possible and in a manner so as to minimize interference with the use of the Common Area. If the Parties elect to install Common Utility Lines, all repair, maintenance, replacement and other work thereon shall be performed by the Operator as part of the Common Area maintenance, unless otherwise provided herein.

-5-

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VOL 998 PAGE 429



- (B) The initial location of any Utility Line shall be subject to the prior written approval of the Party whose Common Area is to be burdened thereby, such approval not to be unreasonably withheld or delayed. The easement area shall be no wider than necessary to reasonably satisfy the requirements of a private or public utility, or five feet (5') on each side of the centerline if the easement is granted to a Party. Upon request, the grantee shall provide to the grantor a copy of an as-built survey showing the location of such Utility Line. The grantor shall have the right at any time to relocate a Utility Line upon thirty (30) days' prior written notice, provided that such relocation:
- (i) shall not interfere with or diminish the utility service to the grantee;
- (ii) shall not reduce or unreasonably impair the usefulness or function of such Utility Line;
- (iii) shall be performed without cost or expense to grantee;
- (iv) shall be completed using materials and design standards which equal or exceed those originally used;
- (v) shall have been approved by the provider of such service and the appropriate governmental or quasi-governmental agencies having jurisdiction thereover; and
 - (vi) shall not disrupt the grantee's business operation.

Documentation of the relocated easement area, including the furnishing of an "as-built" survey, shall be the grantor's expense and shall be accomplished as soon as possible.

- (C) Each Party hereby grants and conveys to each Party owning an adjacent Tract the perpetual right and easement to discharge surface storm drainage and/or runoff from the grantee's Tract over, upon and across the Common Area of the grantor's Tract, to the extent the designed drainage system provides for such, upon the following conditions and terms:
- (i) The Common Area grades and the surface water drainage for the Shopping Center shall be constructed in strict conformance with the details approved by the Approving Parties and applicable legal requirements; and
- (ii) No Party shall alter or permit to be altered the surface of the Common Area or the drainage system constructed on its Tract if such alteration would materially increase the flow of

-6-

1256/054:06/04/91:MSC545

surface water onto an adjacent Tract either in the aggregate or by directing the flow of surface water to a limited area.

The surface water collection and distribution facilities located on the Shopping Center shall be deemed a Common Utility Line.

2.3 Construction, Maintenance and Reconstruction.

- (A) In order to accommodate any footings, foundations, columns or walls which may be constructed or reconstructed immediately adjacent to a common boundary line and which may overlap that common boundary line, each Party grants to each Party owning an adjacent Tract a non-exclusive easement in, to, over, under, and across that portion of its Tract adjacent to such common boundary line in space not theretofore occupied by any then existing structure for the construction, maintenance and replacement of underground footings to a maximum lateral distance of five feet (5') and for the construction, replacement and maintenance of foundations, columns, or walls to a maximum lateral distance of six inches (6"). The easement shall:
- (i) continue in effect for the term of this OEA and thereafter for so long as the building utilizing the easement area exists (including a reasonable period to permit reconstruction or replacement of such building if the same shall be destroyed, damaged, or demolished) and
- (ii) include the reasonable right of access necessary to exercise and enjoy such grant upon terms and with the limitations described in Section 3.1(E) below.
- (B) Prior to utilizing any easement set forth Section 2.3(A) above, the grantee Party shall advise the grantor party of its intention to use the same, and shall provide plans and stand specifications and proposed construction techniques for the improvements to be located within the easement area, and shall give the grantor Party an opportunity to commence any construction activities which it contemplates undertaking to the end that each Party involved shall be able to utilize subterranean construction techniques which will permit the placement above ground of a building on each Tract immediately adjacent to the common boundary line. If a common subterranean construction element is used, it is specifically understood that the grantor and the grantee shall each assume and pay its reasonable share of the cost and expense of the initial construction and, so long as both Parties are benefitting therefrom, subsequent maintenance thereof. In the event any building utilizing a common subterranean element is destroyed and not replaced or is removed, the common subterranean construction element shall be left in place for the benefit of any building utilizing the same located on the adjoining Tract.

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- (C) Nothing herein shall be deemed to create or establish a "common" or "party" wall to be shared by buildings constructed along the common boundary line between the Tracts.
- 2.4 <u>Restriction</u>. No Party shall grant any easement for the purpose set forth in this Article for the benefit of any property not within the Shopping Center; provided, however, that the foregoing shall not prohibit the granting or dedicating of easements by a Party on its Tract to governmental or quasi-governmental authorities or to public utilities.

ARTICLE III CONSTRUCTION

3.1 General Requirements.

- (A) Each Party agrees that all construction activities performed by it within the Shopping Center shall be performed in compliance with all applicable laws, rules, regulations, orders, and ordinances of the city, county, state, and federal governments, and all departments and agencies thereof. Every building shall be equipped with an automatic sprinkler system.
- (B) Each Party further agrees that its construction activities shall not:
- (i) cause any material increase in the cost of constructing improvements upon another Party's Tract;
- (ii) materially interfere with construction work being performed on any other part of the Shopping Center;
- (iii) materially interfere with the use, occupancy or enjoyment of any part of the remainder of the Shopping Center by any other Party or its Permittees;

(iv) cause any building or improvement located on another Tract to be in violation of any law, rule, regulation, order or ordinance authorized by any city, county, state, federal government, or any department or agency thereof.

(C) Each Party agrees to defend, indemnify and hold harmless each other Party from all claims, losses, liabilities, actions, proceedings and costs (including reasonable attorneys' fees and costs of suit), including liens, and any accident, injury or loss or damage whatsoever occurring to any Person or to the property of any Person arising out of or resulting from any construction activities performed or authorized by such indemnifying Party, provided however, that the foregoing shall not be applicable to events or circumstances caused by the negligence or willful act or

-8-

1256/054:06/04/91:MSC545

omission of such indemnified Party, its licensees, concessionaires, agents, servants, employees, or anyone claiming by, through or under any of them. If losses, liabilities, damages, liens, costs and expenses so arising are caused by the concurrent negligence of two Parties, their employees, agents, invitees and licensees, a Party shall indemnify the other only to the extent of the first Party's own negligence or that of its officers, agents, employees, guests or invitees. The foregoing indemnity is specifically and expressly intended to constitute a waiver of immunity under Washington's Industrial Insurance Act, RCW Title 51, to the extent necessary to provide a Party with a full and complete indemnity from claims made by the other and its employees, to the extent of their negligence. THE PARTIES ACKNOWLEDGE THAT THE INDEMNIFICATION PROVISIONS OF THIS SECTION 3.1 WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM.

- In connection with any construction, reconstruction, repair or maintenance on its Tract, each Party reserves the right to create a temporary staging and/or storage area in the Common Area on its Tract at such location as will/not unreasonably interfere with access between such Tract and the other areas of the Shopping Center. Prior to the commencement of any work which requires the establishment of a staging and/or storage area on its Tract, a Party shall give the Approving Parties at least thirty (30) days prior notice of the proposed location, and if substantial work is to be performed, the constructing Party shall, at the request of any Approving Party, fence off the staging and/or All storage of materials and the parking of storage area. construction vehicles, including vehicles of workers, shall occur only on the constructing Party's Tract. Upon completion of such work, the constructing Party shall restore the affected Common Area to a condition equal to or better than that existing prior to commencement of such work.
- Each Party hereby grants and conveys to each other Party and to its respective contractors, materialmen and laborers a temporary license for access and passage over and across the Common Area of the grantor's Tract as shall be reasonably necessary for the grantee to construct and/or maintain improvements upon the grantee's Tract; provided, however, that such license shall be in effect only during periods when actual construction and/or maintenance is being performed and provided further that the use of such license shall not materially interfere with the use and operation of the Common Area by others. Prior to exercising the construction rights granted herein, the grantee shall first provide the grantor with a written statement describing the need for such license, and shall furnish a certificate of insurance showing that its contractor has obtained the minimum insurance coverage required by Section 5.4(C) hereof. Any Party availing itself of the temporary license shall promptly pay all costs and expenses

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-9-

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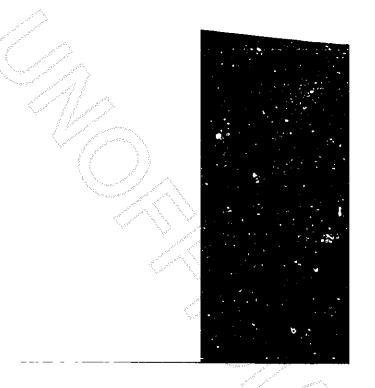
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associated with such work, shall diligently complete such work as quickly as possible, and shall promptly clean the area and restore the affected portion of the Common Area to a condition which is equal to or better than the condition which existed prior to the commencement of such work. Notwithstanding the foregoing, in the event a dispute exists between the contractors, laborers, suppliers and/or others connected with construction activities, each Party shall have the right to prohibit the contractors, laborers, suppliers and/or others working for another Party from using the Common Area on the first Party's Tract.

- 3.2 <u>Common Area</u>. The Parties have agreed that the Common Area of the Shopping Center shall be initially constructed as shown on the Site Plan, provided, however, no fence or other barrier which would prevent or unreasonably obstruct the passage of pedestrian or vehicular travel shall be erected or permitted within or across the Common Area, exclusive of the limited curbing and other forms of traffic control depicted on the Site Plan. Contemporaneously with the construction of a building upon its Tract, other than the Red Robin restaurant on Developer's Tract, the constructing Party shall cause the Common Area on its Tract to be substantially completed no later than the day the first Occupant of such Tract opens for business with the public. The requirements of the preceding sentence shall not apply to Developer if the opening of the building on the Target Tract is delayed beyond the opening of a building on the Developer Tract. Such work shall be done in a good and workmanlike manner and in accordance with good engineering standards; provided, however, the following minimum general design standards shall be complied with:
- (A) The lighting system shall be designed to produce a minimum maintained lighting intensity measured thirty (30) inches above the adjacent ground in the Common Area of 2.0 foot candles; provided however, that the extreme edge of the parking or drive areas may have not less than a minimum maintained lighting intensity measured at grade of 1.0 foot candle, and provided further that the drive areas immediately in front of the entrance to any building shall have not less than a minimum maintained lighting intensity measured as above of 5.0 foot candles. Each Party may elect to control the lighting system located on its Tract. The type and design of the Common Area light standards shall be approved by the Approving Parties.
- (B) The slope in the parking area shall not exceed a maximum of four percent (4%), nor be less than a minimum of one percent (1%).
- (C) All sidewalks and pedestrian aisles shall be concrete or other approved materials; the automobile parking areas, drives, and access roads shall be designed by Rittenhouse Zeiman & Associates

-10-

1256/054:06/04/91:MSC545



which shall require the installation of a suitable base and the surfacing with an asphaltic concrete or concrete wearing material.

- (D) Utility Lines that are placed underground shall be at depths designated by KPFF Consulting Engineers.
- (E) The parking area on each Tract shall comply with applicable law and contain sufficient ground level, parking spaces in order to comply with the following minimum requirements:
- (i) five (5.0) parking spaces for each one thousand (1,000) square feet of Floor Area; provided, however, that compact car parking spaces shall be located only in the areas, if any, designated on the Site Plan.
- (ii) if a business use contains a drive-up unit (such as remote banking teller or food ordering/dispensing facility), then there shall also be created space for stacking not less than five (5) automobiles for each drive-up unit.
- (iii) for the first single eat-in style restaurant, five (5) additional parking spaces for each one thousand (1,000) square feet of Floor Area devoted to such use.
- (iv) for the second and subsequent eat-in style restaurants, ten (10) additional parking spaces for each one thousand (1,000) square feet of Floor Area devoted to such use.

In the event of a condemnation of part of a Tract or sale or transfer in lieu thereof that reduces the number of usable parking spaces below that which is required herein, the Party whose Tract is so affected shall use its best efforts (including using proceeds from the condemnation award or settlement) to restore and/or substitute parking spaces in order to comply with the parking requirements set forth above. If such compliance is not possible, such Party shall not be deemed in default hereunder, but such Party shall not be permitted to expand the amount of Floor Area located upon its Tract. If such Floor Area is thereafter reduced, then it may not subsequently be increased unless the parking requirements are satisfied.

(F) No Party shall make changes to the improved Common Area on its Tract without the approval of the Approving Parties, except that each Party hereby reserves the right, from time to time without obtaining the consent or approval of any other Party, to make at its own expense non-material changes, modifications or alterations in its portion of the Common Area, including, but not limited to, the installation of convenience facilities such as mailboxes, public telephones and benches, provided that:

-11-

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- (i) the accessibility of such Common Area for pedestrian and vehicular traffic (as it relates to the remainder of the Shopping Center) is not unreasonably restricted or hindered and all parking stalls and rows and vehicular traffic lanes shall remain generally as shown on the Site Plan;
- (ii) there shall be maintained at all times within such Common Area, a sufficient number of vehicular parking spaces to meet the parking requirements set forth in Section 3.2(E), as well as all governmental rules, regulations, and/or ordinances relating to parking requirements, but without reliance on parking spaces that may be available on another Tract; provided, however, that no more than two percent (2%) of the parking spaces depicted on the Site Plan for such Tract shall be eliminated;
- (iii) no governmental rule, ordinance or regulation shall be violated as a result of such action, and such action shall not result in any other Party being in violation of any governmental rule, ordinance or regulation;
- (iv) no change shall be made in the access points between the Common Area and the public streets; provided, however, that additional access points may be created with the approval of the Approving Parties, such approval not to be unreasonably withheld; and
- (v) at least thirty (30) days prior to making any such change, modification or alteration, the Party desiring to do such work shall deliver to each other Party copies of the plans therefor, and provided further that such work shall not occur between October 1st and the following January 31st.

3.3 Building Improvement.

- (A) While it is acknowledged and agreed that no Party shall have an obligation to commence construction, the Parties hereby agree that (i) all buildings shall be located only within the Building Areas designated on the Site Plan, and (ii) if the amount of Floor Area for any Building Area is designated on the Site Plan, such size limitation shall not be exceeded.
- (B) Developer shall determine an architecturally compatible theme for the exterior of all buildings to be constructed, placed or located within the Shopping Center which shall not conflict with the architectural theme for neighboring Cascade Mall. In order to insure compliance with such theme, each Party shall submit to the Approving Parties detailed plans ("Plans") as required by Exhibit C attached hereto covering the initial construction of each building and any additions, remodeling, reconstruction or other alteration which changes the exterior thereof for approval prior to

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the commencement of any such work; provided, however, the foregoing shall not require prior approval of the plans or design for the Red Robin restaurant to be located on Developer's Tract. Upon the issuance of any disapproval or recommendation for change, the submitting Party, and the Approving Parties shall mutually consult to establish approved Plans for the proposed work. The Approving Parties shall not arbitrarily or unreasonably withhold approval of the Plans or recommend changes in the Plans which otherwise conform with the requirements hereof, nor shall they withhold approval of exterior remodeling or exterior reconstruction which does not either enlarge or substantially change an existing structure. In no event shall an Approving Party require any other Party to utilize design standards superior to those utilized by the Approving Party in the construction of buildings on its Tract. Approval of Plans by the Approving Parties shall not constitute assumption of responsibility for the accuracy, sufficiency, or propriety thereof, nor shall such approval constitute a representation or warranty that the Plans comply with applicable laws. No material deviation shall be made from the approved Plans. Notwithstanding the foregoing, the Approving Parties agree that if Target builds a prototype Target building of the type built in Westwood Village Shopping Center, the plans for which were previously provided to Developer, then the requirement for the submission of Plans for such building to Developer is waived.

- (C) Developer and Target hereby specifically consent to the placement of buildings along the common boundary line between the Target Tract and the Developer Tract, and each agrees to support any request by the other for a side-yard or setback variance if the same is required in order to accommodate such construction.
- (D) Developer acknowledges that Target proposes to construct on the Target Tract a retail store which is generally classified as an "unlimited area" building under certain applicable building codes. (By way of explanation, but not limitation, an "unlimited area" building is designated Type II-N or V-N under the Uniform Building Code.) Target agrees that if it constructs a Type II-N or V-N building, such building shall be located immediately adjacent to the common boundary line and shall be subject to an agreement (60 yard) with the City of Burlington. So long as Target plans to construct a Type II-N or V-N building, or so long as a Type II-N or V-N building exists on the Target Tract (including any restoration or reconstruction thereof), Developer agrees that each building placed or constructed on the Developer Tract shall comply with the following requirements:
- (i) no building shall be constructed within sixty feet (60') of the Building Area on the Target Tract unless such building, hereinafter referred to as the "adjacent building", shall be located immediately adjacent to the common boundary line and is

-13-

1256/054:06/04/91:MSC545

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attached to Type II-N or V-N building on the Target Tract, when and so long as such Type II-N or V-N building exists.

- (ii) if an "adjacent building" exists, then no building shall be located within sixty feet (60') of the "adjacent building" unless such building is attached to the "adjacent building"; the "adjacent building" and all other buildings on the Developer Tract that are attached to the "adjacent building" and to each other are hereinafter referred to as the "building group."
- (iii) any building that is not part of the "building group," shall be located at least sixty feet (60') distant from the "building group."
- (iv) the "adjacent building" or the "building group," as the case may be, shall comply with the building code requirements applicable to a Type II-N or V-N building, including without limitation the installation of an approved sprinkler system for fire protection.
- If required by any governmental authority, each Party agrees to join in a recordable declaration which confirms the existence of a sixty foot (60') yard or clear area around the Target building and the buildings, if any, which are included within (i) and (ii) above. In addition to the requirements set forth above, no building shall be placed or constructed on the Developer Tract in a manner which will either preclude the construction of a Type II-N or V-N building on the Target Tract, or cause an existing Type II-N or V-N building on the Target Tract to no longer be in conformance with applicable building code requirements.
- (E) The second Party to construct a building along a common boundary line shall do so in a manner that does not result in damage to the improvements in place on the adjoining Tract, and further shall undertake and assume at its sole cost the obligation of completing and maintaining the nominal attachment (flashing and seal) of its building to that of the existing building on the other Tract, it being the intent of the Parties to establish and maintain the appearance of one continuous building complex. In performing such attachment, the wall of one building shall not receive support from nor apply pressure to the wall of the other building, except as specifically permitted under terms of Section 2.3(A).
- (F) No building or other structure (exclusive of any free standing sign referred to in Section 5.3 hereof) shall exceed the height of the building built on the Target Tract, except that the height of the Red Robin building on Developer's Tract shall not exceed twenty-three (23) feet. The height of any building shall be measured perpendicular from the surface of the lowest level to the top of the roof structure, including any screening, parapet,

-14-

1256/054:06/04/91:MSC545

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_ VOL 998 PACE 438

penthouse, mechanical equipment or similar appurtenance located on the roof of such building. Any Party shall have the right to install, maintain, repair, replace and remove Communications Equipment on the top of the building on its Tract which may extend above the height limits established above by no more than ten (10) feet; provided, however, such Communications Equipment shall be set back from the front of the building to reduce visibility thereof by customers and shall comply with applicable law. As used herein, the phrase "Communications Equipment" means such things as satellite and microwave dishes, antennas and laser heads, together with associated equipment and cable.

ARTICLE IV MAINTENANCE AND REPAIR

4.1 <u>Utility Lines</u>.

(A) Each Party shall maintain and repair, or cause to be maintained and repaired, in a good and safe condition, all Separate Utility Lines utilized by it regardless of where located. maintenance and repair of nondedicated utilities located on another Party's Tract shall be performed only after two (2) weeks' notice to the grantor (except in an emergency the work may be initiated with reasonable notice) and shall be done after normal business hours whenever possible and shall otherwise be performed in such a manner as to cause as little disturbance in the use of the grantor's Tract as is practicable under the circumstances. Party performing or causing to be performed maintenance or repair work agrees to promptly pay all costs and expenses associates therewith, to diligently complete such work as quickly as possible and to promptly clean the area and restore the affected portion of the Common Area to a condition equal to or better than the condition which existed prior to the commencement of such work.

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(B) Common Utility Lines shall be maintained and replaced as part of the Common Area pursuant to Section 4.2 below.

4.2 Common Area.

(A) The minimum standard of maintenance for the improved Common Area shall be comparable to the standard of maintenance followed in other first class retail developments of comparable size in the greater Seattle, Washington area notwithstanding the foregoing, however, the Common Area shall be operated and maintained in compliance with all applicable governmental laws, rules, regulations, orders and ordinances, and the provisions of this OEA. All Common Area improvements shall be repaired or replaced with materials at least equal to the quality of the materials being repaired or replaced so as to maintain the architectural and aesthetic harmony and integration of the Shopping

-15-

1256/054:06/04/91:MSC545



Center as a whole. The maintenance and repair obligation shall include but not be limited to the following:

- (i) Drive and Parking Areas. Maintaining, cleaning and replacing all paved surfaces and curbs in a smooth and evenly covered condition, such work shall include, without limitation, sweeping, restriping, resealing and resurfacing. (For the purpose of this section, an overlay of the drive and parking areas shall be considered a maintenance item.)
- (ii) Debris and Refuse. Periodic removal of all papers, debris, filth, refuse, ice and snow, including sweeping to the extent necessary to keep the Common Area in a first-class, clean and orderly condition. All sweeping shall be at appropriate intervals during such times as shall not materially interfere with the conduct of business or use of the Common Area by persons intending to conduct business with Occupants of the Shopping Center.
- (iii) Sign and Markers. Placing, cleaning, keeping in repair, replacing and repainting any appropriate directional signs or markers, including any handicapped parking signs.
- (iv) Lighting. Maintaining, cleaning and replacing Common Area lighting facilities, including lamps, ballasts and lenses.
- (v) Landscaped Areas. Maintaining all landscaped areas, including landscaping and planters adjacent to exterior walls of buildings, in an attractive and thriving condition, and replacing shrubs and other landscaping as necessary; provided, however, that if any Occupant requires "special" landscaping (i.e. beyond the standard landscaping requirements for the remainder of the Shopping Center), the cost of installation, replacement and maintenance of such special landscaping shall be borne solely by such Occupant and shall not be included in Common Area Maintenance Costs.
- (vi) Common Utility Lines. Maintaining, cleaning, replacing, and repairing any and all Common Utility Lines.
- (vii) Obstructions. Keeping the Common Area free from any obstructions including those caused by the sale or display of merchandise, unless such obstruction is permitted under the provisions of this OEA.
- (viii) Sidewalks. Maintaining, cleaning and replacing all sidewalks, including those adjacent and contiguous to buildings located within the Shopping Center. Sidewalks shall be cleaned and swept at appropriate intervals during such time as shall not

-16-

1256/054:06/04/91:MSC545

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materially interfere with the conduct of business or use of the Common Area.

- (ix) Supervisory Personnel. Providing of supervisory personnel for the Common Area, if reasonably required.
- (x) Traffic. Supervision of traffic at entrances and exists to the Shopping Center and within the Shopping Center as conditions reasonably require in order to maintain an orderly and proper traffic flow.

Notwithstanding anything to the contrary, each Party shall maintain and repair, at its sole cost, in a clean, sightly and safe condition any exterior shipping/receiving dock area, any truck ramp or truck parking area, and any refuse, compactor or dumpster area on its Tract.

(B) From and after the date upon which the Common Area on either the Developer Tract or the Target Tract is substantially completed, the Operator shall maintain the Common Area or cause it to be maintained, in good order, and sightly and safe condition. Operator may hire companies affiliated with it to perform the maintenance and operation of the Common Area, but only if the rates charged by such companies are competitive with those of other companies furnishing similar services in the metropolitan area in or about the Shopping Center, it being agreed that this provision shall be construed strictly against Operator. Each Party hereby grants to Operator, its agents and employees a license to enter upon its Tract to discharge the duties to operate, maintain and repair the Common Area pursuant to Section 4.2. The Approving Parties hereby designate Developer as the initial Operator for a minimum term of one (1) year from the date upon which the Common Area on the first of either the Developer Tract or Target Tract is substantially completed, and Developer accepts such appointment. The Person appointed by the Approving Parties to act as the Operator shall serve in such capacity, commencing with the date it is first appointed to maintain the Common Area, unless such Person shall resign or is removed by the Approving Parties.

Operator shall expend only such funds as are reasonably necessary for the operation, maintenance and insurance of the Common Area and shall pay such costs in a timely manner ("Common Area Maintenance Costs"). For the purpose of this OEA, Common Area Maintenance Costs shall not include:

(i) any late charges or fees;

(ii) any charge for electricity related to lighting to a Party that separately pays the electrical costs for lighting the Common Area on its Tract;

1256/054:06/04/91:MSC545

-17-

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VOL 998 PAGE 471

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157 AM

- (iii) any costs to clean up or repair the Common Area resulting from construction or replacement of buildings;
- (iv) real property taxes and assessments, if separately assessed and taxed;
- (v) Operator's profit, administrative and overhead costs (including but not limited to: office space, equipment and utilities; legal, accounting or administrative services; Operator's personnel who are not permanently located at the Shopping Center); and
- (vi) entertainment, transportation, meals and lodging of anyone.

In lieu of Operator's profit, administrative and overhead costs, Operator shall be permitted to charge an amount ("Administration Fee") computed by multiplying the Common Area Maintenance costs (exclusive of insurance premiums, real estate taxes, utility charges and fees paid to third parties) by ten percent (10%). If any of Operator's personnel at the Shopping Center perform services, functions or tasks in addition to Common Area duties, then the cost of such personnel shall be equitably allocated according to time spent performing such duties.

(C) Operator shall, at least sixty (60) days prior to the beginning of each calendar year, submit to the Approving Parties an estimated budget ("Budget") for the projected Common Area Maintenance Costs and the Administration Fee for operating and maintaining the Common Area of the Shopping Center for the ensuing calendar year. The Budget shall identify separate cost estimates for at least the categories specified under Section 4.2(A), plus:

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- (i) premium for public liability insurance covering the Common Area as required by Section 5.4(A) below;
 - (ii) rental or purchase of equipment and supplies;
- (iii) depreciation or trade-in allowance applicable to items purchased for Common Area purposes; and
 - (iv) Administration Fee.

If an item of maintenance or replacement is to be accomplished in phases over a period of calendar years, such as resurfacing of the drive and/or parking areas, then the Budget shall separately identify the cost attributable to such year (including the area of the Common Area affected), and shall note the anticipated cost and timing (indicating the area of the Common Area affected) of such

-18-

1256/054:06/04/91:MSC545

VOL 998 PAGE

phased work during succeeding calendar years. The cost of approved "phased" work shall be paid by the Parties approving the same, notwithstanding that when such work is performed a party may not then be participating in the joint maintenance of the Shopping Center.

If an Approving Party disapproves the proposed Budget, it shall consult with the other Approving Party and the Operator to establish a final approved Budget. If a Budget is not approved by December 1st of any calendar year, Operator shall have the right to terminate its maintenance obligation with respect to the Common Area located on the Tract of the disapproving Approving Party by written notice prior to December 10th. If the notice is given, then Operator shall maintain and operate the balance of the Shopping Center and such disapproving Approving Party shall maintain and operate the Common Area on its Tract, commencing on the following January 1st. If the notice is not given, then Operator shall continue to maintain and operate the Common Area for the next calendar year.

Operator shall use its best efforts to operate and maintain the Common Area of the Shopping Center in accordance with the Budget. Notwithstanding the foregoing, Operator shall have the right to make emergency repairs to the Common Area to prevent injury or damage to person or property, it being understood that Operator shall nevertheless advise each Party of such emergency condition as soon as reasonably possible, including the corrective measures taken and the cost thereof. If the cost of the emergency action exceeds \$1,000 then Operator may submit a supplemental billing to each Party, together with evidence supporting such payment, and each Party shall pay its share thereof within thirty (30) days; if the cost limitation set forth above is not exceeded then such costs shall be included as part of the Common Area Maintenance Costs at the year end.

(D) Common Area Maintenance Costs and the Administration Fee shall be allocated among the Developer Tract and the Target Tract on a pro rata basis based on square footage area of those two (2) Tracts.

In the event an existing Tract is divided, the Party causing such division shall prorate the allocation attributable to the existing Tract between the newly created Tracts, file a recorded declaration confirming such allocation and deliver a copy of such declaration to the Operator and each other Party. Each Party shall pay to the Operator in equal monthly payments, in advance on the first day of each month, its share of the Common Area Maintenance Costs and the Administration Fee based either upon the amount set forth in the approved Budget, or if a Budget is not approved, then the greater of the amount set forth in the unapproved Budget or the monthly

-19-

1256/054:06/04/91:MSC545

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payment established for the prior year. The Operator shall reasonably estimate such costs for the partial year during which its maintenance obligations commence and each Party shall make its first payment in the month following Operator's undertaking of such maintenance and repair of the Common Area. Within ninety (90) days after the end of each calendar year, Operator shall provide each Party with a statement certified by Operator (hereinafter a "certified statement") setting forth the actual Common Area Maintenance Costs paid by it for the operation and maintenance of such Common Area, the Administration Fee, and such Party's share of the aggregate thereof. After written request by Target, Operator shall provide Target with requested invoices and supporting material for the costs. If the amount paid by a Party for such calendar year shall have exceeded its share, Operator shall refund the excess to such Party at the time such certified statement is delivered, or if the amount paid by a Party for such calendar year shall be less than its share, such Party shall pay the balance of its share to Operator within thirty (30) days after receipt of such certified statement. Within two years after receipt of any such certified statement, each Party shall have the right to audit Operator's books and records pertaining to the operation and maintenance of the Common Area for the calendar year covered by such certified statement; the Party shall notify Operator of its intent to audit at least thirty (30) days prior to the designated audit date. In the event that such audit shall disclose any error in the determination of the Common Area Maintenance Costs, the Administrative Fee or the allocation thereof to a Tract, an appropriate adjustment shall be made forthwith. The cost of any audit shall be assumed by the auditing Party unless such Party shall be entitled to a refund in excess of three percent (3%) of the amount calculated by Operator as its share for the calendar year, in which case Operator shall pay the reasonable cost of such audit.

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- (E) Operator agrees to defend, indemnify and hold each Party harmless from and against any mechanic's, materialmen's and/or laborer's liens, and all costs, expenses and liabilities in connection therewith, including reasonable attorneys' fees and court costs, arising out of the maintenance and operation by Operator of the Common Area, and in the event that any Tract shall become subject to any such lien, Operator shall promptly cause such lien to be released and discharged of record, unless it wishes to contest such, in which event it shall contest such with diligence and, if the lien is not removed prior to the lien claimant's filing of a foreclosure action, Operator shall within twenty (20) days after the filing of such action post a bond or other security in the amount of the lien with the Party who owns the Tract as security for its removal.
- (F) In the event any of the Common Area is damaged or destroyed by any cause whatsoever, whether insured or uninsured,

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during the term of this OEA, other than damage caused by ordinary use or wear and tear, the Party upon whose Tract such Common Area is located shall repair or restore such Common Area at its sole cost and expense with all due diligence. In the event such damage or destruction of Common Area is caused in whole or in part by another Party or third Person, the Party obligated to make such repair or restoration reserves and retains the right to proceed against such other Party or third Person for indemnity, contribution or damages.

After the first two (2) years from the date upon which the Common Area on the first of either the Developer Tract or Target Tract is substantially completed, a Party shall have the right, upon giving not less than ninety (90) days' written notice to Operator prior to the end of a calendar to take over and assume the maintenance of the Common Area upon its Tract. Following the effective date of such assumption, that party shall perform all of the functions specified in Section 4.2(A), and pay all costs and expenses incurred in connection with the maintenance and operation of the Common Area on its Tract, except as specified below, and the other Party or the Operator thereafter shall continue to maintain the balance of the Common Area on its Tract in accordance with the standards of Section 4.2(A). Upon such assumption such Party shall be released from the obligation to contribute towards Operator's maintenance and operation of the balance of the Common Area, except with respect to those functions identified above for which continued participation is mandatory or elective; such Party's share of such costs shall be paid in accordance with the allocation set forth in Section 4.2(D) above.

4.3 <u>Building Improvements</u>.

(A) After completion of construction, each Party covenants and agrees to maintain and keep the building improvements located on its Tract in first-class condition and state of repair, in compliance with all governmental laws, rules, regulations, orders, and ordinances exercising jurisdiction thereover, and in compliance with the provisions of this OEA, including the architectural theme. Each Party further agrees to store all trash and garbage in adequate containers, to locate such containers so that they are not readily visible from the parking area, and to arrange for regular removal of such trash or garbage.

(B) In the event any of the building improvements are damaged by fire or other casualty (whether insured or not), the Party upon whose Tract such building improvements are located shall promptly remove the debris resulting from such event and provide a sightly barrier, and within a reasonable time thereafter shall either (i) repair or restore the building improvements so damaged to a complete unit, such repair or restoration to be performed in

-21-

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accordance with all provisions of this OEA, or (ii) erect other building improvements in such location, such construction to be performed in accordance with the provisions of Article III of this OEA, or (iii) demolish the damaged portion and/or the balance of such building improvements and restore the cleared area to either a hard surface condition or a landscaped condition. Such Party shall have the option to choose which of the foregoing alternatives to perform, but such Party shall be obligated to perform one of such alternatives. Such Party shall give notice to each other Party within ninety (90) days from the date of such casualty of which alternative it elects.

ARTICLE V

OPERATION OF THE SHOPPING CENTER

5.1 <u>Uses</u>.

- (A) No part of the Shopping Center shall be used for other than retail sales, offices, Restaurants or other commercial purposes. "Business Office" shall mean an office which does not provide services directly to consumers; "Retail Office" shall mean an office which provides services directly to consumers, including but not limited to financial institutions, real estate, stock brokerages, title company and escrow offices, travel and insurance agencies, and medical, dental and legal clinics. Not more than twenty percent (20%) of the total Floor Area on the Developer Tract may be used for Retail Office and/or Business Office.
- (B) No use shall be permitted in the Shopping Center which is inconsistent with the operation of a first-class retail shopping center. Without limiting the generality of the foregoing, the following uses shall not be permitted:
- (i) Any use which emits an obnoxious and offensive odor, noise, or sound which can be heard or smelled outside of any building in the Shopping Center;
- (ii) Any operation primarily used as a warehouse operation and any assembling, manufacturing, distilling, refining, smelting, agricultural, or mining operation;
 - (iii) Any "second hand" store or "surplus" store;
- (iv) Any mobile home park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction, or maintenance);

-22-

1256/054:06/04/91:MSC545

VOL 998 PADE 446

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- (v) Any dumping, disposing, incineration, or reduction of garbage (exclusive of garbage compactors located near the rear of any building);
- (vi) Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation;
- (vii) Any central laundry, dry cleaning plant, or laundromat; provided, however, this prohibition shall not be applicable to on-site service oriented to pickup and delivery by the ultimate consumer, including nominal supporting facilities, as the same may be found in retail shopping districts in the metropolitan area where the Shopping Center is located;
- (viii) Any automobile, truck, trailer or recreational vehicles sales, leasing, display or repair;
 - (ix) Any bowling alley or skating rink;
 - (x) Any theater;
- (xi) Any living quarters, sleeping apartments, or lodging rooms;
 - (xii) Any mortuary or funeral home;
- (xiii) selling or exhibiting Any establishment pornographic materials;
- (xiv) Any bar or tavern or any restaurant or other establishment that is licensed in a manner which contemplates that it will have annual gross revenues from the sale of alcoholic and AM beverages for on-premises consumption exceeding sixty percent (60%) of the gross revenues of such business;

- (xv) Any flea market, pool or billiard hall, car wash, or dance hall:
- (xvi) Any training or educational facility, including but not limited to: beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided however, this prohibition shall not be applicable to on-site employee training by an Occupant incidental to the conduct of its business at the Shopping Center.
- (xvii) Any veterinary hospital or animal raising facilities (except that this prohibition shall not prohibit pet shops)

-23-

1256/054:06/04/91:MSC545

(xviii) Any health spa, fitness center or workout facility larger than 5,000 square feet;

(xix) Any amusement or video arcade greater than 1,500 square feet; and

(xx) A drug store exceeding 15,000 square feet of Floor Area.

- (C) The name "Target" shall not be used to identify the Shopping Center or any business or trade conducted on the Developer Tract.
- (D) No merchandise, equipment or services, including but not limited to vending machines, promotional devices and similar items, shall be displayed, offered for sale or lease, or stored within the Common Area; provided however, that the foregoing prohibition shall not be applicable to (i) the storage of shopping carts; (ii) the seasonal display and sale of bedding plants on the sidewalk in front of any building; or (iii) temporary Shopping Center promotions, except that no promotional activities will be allowed in the Common Area without the prior written approval of Target and the other Approving Parties. In addition, if a recycling center or equipment is required by law to be located in the Shopping Center, the location shall be subject to the approval of the Approving Parties.
- (E) No Permittee shall be charged for the right to use the Common Area. No Party may place signs on its Tract indicating that parking on such Tract is limited to the customers of that Party.
- (F) Each Party shall use its best efforts to cause the employees of the Occupants of its Tract to park their vehicles only on such Tract.
- (G) This OEA is not intended to, and does not, create or impose any obligation on a Party to operate, or cause to be operated, a business or any particular business at the Shopping Center or on any Tract.
- (H) No Party shall use, or permit the use of Hazardous Materials on, about, under or in its Tract, or the Shopping Center, except in the ordinary course of its usual business operations conducted thereon, and any such use shall at all times be in compliance with all Environmental Laws. Each Party shall indemnify, protect, defend and hold harmless the other Parties from and against all claims, suits, actions, demands, costs, damages and losses of any kind, including but not limited to costs or investigation, litigation and remedial response, arising out of such Party's breach of the obligation set forth in the immediately

-24-

1256/054:06/04/91:MSC545

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preceding sentence. For the purpose of this Section, the term (i) "Hazardous Materials" shall mean: petroleum products, asbestos, polychlorinated biphenyls, radioactive materials and all other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials or substances listed or identified in, or regulated by, any Environmental Law, and (ii) "Environmental Laws" shall mean: all federal, state, county, municipal, local and other statutes, laws, ordinances and regulations which relate to or deal with human health or the environment, all as may be amended from time to time.

5.2 Lighting.

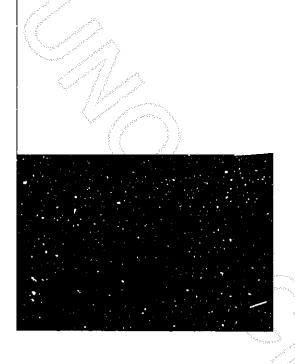
- (A) After completion of the Common Area lighting system on its Tract, each Party hereby covenants and agrees to keep its Tract fully illuminated each day from dusk to at least 11:00 p.m. unless the Approving Parties agree upon a different time. Each Party further agrees to keep any exterior building security lights on from dusk until dawn. During the term of this OEA, each Party grants an irrevocable license to each other Party for the purpose of permitting the lighting from one Tract to incidentally shine on the adjoining Tract.
- (B) Any Party ("Constructing Party") may install, with the consent of the affected Party ("Consenting Party"), a secondary wiring system, from the Constructing Party's Tract to the light standards on the Consenting Party's Tract, which would permit a portion or all of the lighting on the Consenting Party's Tract to be operated contemporaneously with the lighting on the Constructing All costs and expenses associated with the Party's Tract. installation, maintenance, replacement, and operation of such secondary wiring, including the cost of energy to light any portion of the Consenting Party's Tract, shall be assumed and promptly paid by the Constructing Party. The Constructing Party shall submit to the Consenting Party appropriate plans and specifications for the installation of such secondary wiring systems. The Consenting Party shall have thirty (30) days to approve or disapprove of such submission, such approval not to be unreasonably withheld.

5.3 <u>Signs</u>.

(A) No freestanding sign shall be permitted within the Shopping Center unless constructed in an area designated on the Site Plan, and only one such sign may be located in such designated area. Governmental approvals have been obtained for a freestanding Shopping Center sign which will be erected at the Burlington Boulevard entrance to the Shopping Center with the Shopping Center name on top and with the balance of the sign divided between Target and a tenant designated by Developer, with Target to have higher positioning on the sign than such other tenant as reflected on Exhibit C.

-25-

1256/054:06/04/91:MSC545





(B) Any Occupant occupying less than ten thousand (10,000) square feet of Floor Area may have only one (1) identification sign placed on the exterior of the building it occupies; provided however, that if any such Occupant is located at the corner of a building, then such Occupant may have an identification sign on each side of such corner. No Occupant may have more than three (3) identification signs placed on the exterior of the building it occupies.

No exterior identification sign attached to a building shall be:

- (i) placed on canopy roofs extending above the building roof, placed on penthouse walls, or placed so as to project above the parapet, canopy, or top of the wall upon which it is mounted;
- (ii) placed at any angle to the building; provided, however, the foregoing shall not apply to any sign located under a sidewalk canopy if such sign is at least eight (8) feet above the sidewalk;
 - (iii) painted on the surface of any building;
 - (iv) flashing, moving or audible signs;
- (v) signs employing exposed raceways, exposed ballast boxes, or exposed transformers; or
- (vi) paper or cardboard signs, temporary signs (exclusive of contractor signs), stickers or decals; provided, however, the foregoing shall not prohibit the placement at the entrance of each Occupant's space a small sticker or decal, indicating hours of business, emergency telephone numbers, acceptance of credit cards, and other similar bits of information.
- (C) Notwithstanding anything above to the contrary, each Party shall be permitted to place within the Common Area located on its Tract directional signs or informational signs such as "Handicapped Parking", the temporary display of leasing information and the temporary erection of one sign identifying each contractor working on a construction job.

5.4 Insurance.

(A) Each Party (as to its Tract only) shall maintain or cause to be maintained in full force and effect Comprehensive General/Commercial General Liability Insurance with a combined single limit of liability of not less than Five Million Dollars (\$5,000,000) for bodily or personal injury or death, and for property damage, arising out of any one occurrence.

-26-

1256/054:06/04/91:MSC545

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VOL 998 PAGE 31

Each Party ("Indemnitor") covenants and agrees to defend, protect, indemnify and hold harmless each other Party ("Indemnitee") from and against all claims, including any action or proceedings brought thereon, and all costs, losses, expenses and liability (including reasonable attorney's fees and cost of suit) arising from or as a result of the injury to or death of any Person, or damage to the property of any Person which shall occur on the Tract owned by each Indemnitor, except for claims caused by the negligence or willful omission of such Indemnitees, its licensees, concessionaires, agents, servants, or employees, or the agents, servants, or employees of any licensee or concessionaire thereof. If losses, liabilities, damages, liens, costs and expenses so arising are caused by the concurrent negligence of both Parties, their employees, agents, invitees and licensees, a Party shall indemnify the other only to the extent of the first Party's own negligence or that of its officers, agents, employees, guests or invitees. The foregoing indemnity is specifically and expressly intended to constitute a waiver of immunity under Washington's Industrial Insurance Act, RCW Title 51, to the extent necessary to provide a Party with a full and complete indemnity from claims made by the other and its employees, to the extent of their negligence. THE PARTIES ACKNOWLEDGE THAT THE INDEMNIFICATION PROVISIONS OF THIS SECTION 5.4(A) WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM.

(B) Prior to commencing any construction activities within the Shopping Center, each Party and Operator shall obtain or require its contractor to obtain and thereafter maintain so long as such construction activity is occurring, at least the minimum insurance coverages set forth below:

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- (i) Workers' Compensation statutory limits
- (ii) Employers' Liability \$500,000
- (iii) Comprehensive General/Commercial General Liability and Business Auto Liability as follows:
 - (a) Bodily Injury \$1,000,000 per occurrence
 - (b) Property Damage \$1,000,000 per occurrence
- (c) Independent Contractors Liability; same coverage as set forth in (a) and (b) above;

-27-

- (d) Products/Completed Operations Coverage;
- (e) "XCU" Hazard Endorsement, if applicable;
- (f) "Broad Form" Property Damage Endorsement;

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VOL 998 ME 451

- (g) "Personal Injury" Endorsements;
- (h) "Blanket Contractual Liability" Endorsement.

If the construction activity involves the use of another Party's Tract, then the owner of such Tract shall be named as an additional insured and such insurance shall provide that the same shall not be canceled without at least thirty (30) days prior written notice to the named insureds and each additional insured. If such insurance is canceled or expires then the Constructing Party shall immediately stop all work on or use of the other Party's Tract until either the required insurance is reinstated or replacement insurance obtained.

(C) Effective upon the commencement of construction of improvements, the Constructing Party will carry or cause to be carried, All-Risk Replacement Cost Property Insurance, such coverage extending to at least the perils identified in the then current standard "All-Risk" policy.

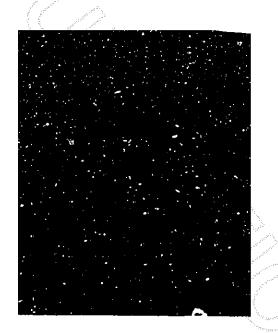
Each Party (the "Releasing Party") hereby releases and waives for itself and on behalf of its insurer, any other Party (the "Released Party") from any liability for any loss or damage to all property of such Releasing Party located upon any portion of the Shopping Center, which loss or damage is of the type generally covered by the insurance required to be maintained under this clause, irrespective either of any negligence on the part of the Released Party which may have contributed to or caused such loss, or of the amount of such insurance required or actually carried. Each Party agrees to use its best efforts to obtain, if needed, appropriate endorsements to its policies of insurance with respect to the foregoing release; provided, however, that failure to obtain such endorsements shall not affect the release hereinabove given. Each Party ("Indemnitor") covenants and agrees to indemnify, defend and hold harmless each other Party ("Indemnitee") from and against all claims asserted by or through any Permittees of the Indemnitor's Tract for any loss or damage to the property of such Permittee located upon the respective Indemnitor's Tract, which loss or damage is of the type generally covered by the insurance required to be maintained under this clause, irrespective of any negligence on the part of the Indemnitee which may have contributed to or caused such loss.

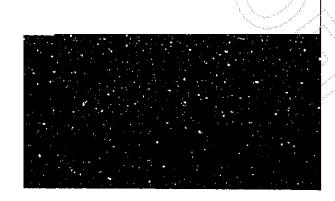
(D) All insurance required by Section 5.4 shall be procured from companies licensed in the state where the Shopping Center is located and shall be rated by Best's Insurance Reports not less than A/X; the limits of such policies shall be reviewed by the Approving Parties and adjusted at least every five (5) years in accordance with normal Shopping Center industry practices, if such practices require an adjustment. All insurance may be provided

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-28-

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under (i) an individual policy covering this location, (ii) a blanket policy or policies which includes other liabilities, properties and locations of such Party; provided, however, that if such blanket policy or policies contain a general policy aggregate of less than \$20,000,000, then such insuring Party shall also maintain excess liability coverage necessary to establish a total liability insurance limit of \$20,000,000, (iii) a plan of selfinsurance, provided that any Party so self-insuring notifies the other Parties of its intent to self-insure and agrees that upon request it shall deliver to such other Parties each calendar year a copy of its annual report that is audited by an independent certified public accountant which discloses that such Party and its affiliates have \$50,000,000 or more of net worth, or (iv) a combination of any of the foregoing insurance programs. extent any deductible is permitted or allowed as a part of any insurance policy carried by a Party in compliance with Section 5.4, such Party shall be deemed to be covering the amount thereof under an informal plan of self-insurance; provided, however, that in no event shall any deductible exceed \$100,000 unless such Party complies with the requirements regarding self-insurance pursuant to (iii) above. Each Party and Operator agrees to furnish to any Party requesting the same, a certificate(s) of insurance evidencing that the insurance required to be carried by such Person is in full force and effect.

The insurance required pursuant to (A) and (B) above shall include the following provisions:

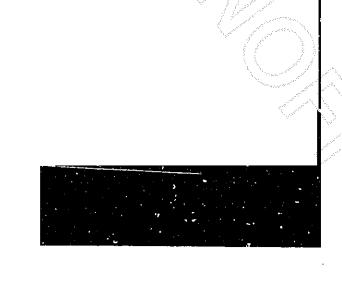
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- (i) shall provide that the policy may not be canceled or materially reduced in amount or coverage without at least thirty (30) days prior written notice by the insurer to each insured and to each additional insured;
 - (ii) shall provide for severability of interests;
- (iii) shall provide that an act or omission of one of the insureds or additional insureds which would void or otherwise reduce coverage, shall not reduce or void the coverage as to the other named and additional insureds; and
- (iv) shall provide for contractual liability coverage with respect to the indemnity obligation set forth herein.
- 5.5 Taxes and Assessments. Each Party shall pay, or cause to be paid prior to delinquency, all taxes and assessments with respect to its Tract, the buildings, and improvements located thereon and any personal property owned or leased by such Party in the Shopping Center, provided that if the taxes or assessments or any part thereof may be paid in installments, the Party may pay each such installment as and when the same becomes due and payable.

-29~

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If the Tracts are not separately assessed for local improvement district purposes, then each Party shall pay the same proportion of such assessments that the area of its Tract bears to the area of Shopping Center. Such assessments shall be paid by each Party prior to delinquency in installments over the maximum period permitted by the assessing authority. Nothing contained in this subsection shall prevent any Party from contesting at its cost and expense any such taxes and assessments with respect to its Tract in any manner such Party elects, so long as such contest is maintained with reasonable diligence, in good faith in compliance with the requirements of applicable law and in a manner which does not jeopardize the interests of the other Parties in the Shopping Center. At the time as such contest is concluded (allowing for appeal to the highest appellate court), the Contesting Party shall promptly pay all such taxes and assessments determined to be owing, together with all interest, penalties and costs thereon.

5.6 Liens. In the event any mechanic's lien is filed against the Tract of one Party as a result of services performed or materials furnished for the use of another Party, the Party permitting or causing such lien to be so filed agrees to cause such lien to be discharged prior to entry of final judgment (after all appeals) for the foreclosure of such lien and further agrees to indemnify, defend, and hold harmless the other Party and its Tract against liability, loss, damage, costs or expenses (including reasonable attorneys' fees and cost of suit) on account of such claim of lien. Upon request of the Party whose Tract is subject to such lien, the Party permitting or causing such lien to be filed agrees to promptly cause such lien to be released and discharged of record, by paying the indebtedness which gave rise to such lien or by posting bond or other security as shall be required by law to obtain such release and discharge. Nothing herein shall prevent a Party permitting or causing such lien from contesting the validity thereof in any manner such Party chooses so long as such contest is pursued with reasonable diligence. In the event such contest is determined adversely (allowing for appeal to the highest appellate court), such Party shall promptly pay in full the required amount, together with any interest, penalties, costs, or other charges necessary to release such lien.

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ARTICLE VI MISCELLANEOUS

6.1 Default.

(A) If any Party fails to comply with any provision herein ("Defaulting Party"), then any other Party ("Non-Defaulting Party") may, upon forty-five (45) days' prior written notice to the Defaulting Party, proceed to cure the default (and shall have a license to do so) by the payment of money or performance of some

-30-

1256/054:06/04/91:MSC545

VOL 998 PAGE 454

other action for the account of the Defaulting Party. foregoing right to cure shall not be exercised if within the fortyfive (45) day notice period (i) the Defaulting Party cures the default, or (ii) if the default is curable, but cannot reasonably be cured within that time period, the Defaulting Party begins to cure such default within such time period and diligently pursues such action to completion. The forty-five (45) day notice period shall not be required if, using reasonable judgment, the Non-Defaulting Party deems that an emergency exists which requires immediate attention. In the event of such an emergency, the Non-Defaulting Party shall give whatever notice to the Defaulting Party as is reasonable under the circumstances.

- (B) Within ten (10) days of written demand (including providing copies of invoices reflecting costs) the Defaulting Party shall reimburse the Non-Defaulting Party for any sum reasonably expended by the Non-Defaulting Party to cure the default, together with interest thereon as provided herein.
- In the event any Party shall institute any action or proceeding against another Party relating to the provisions of this OEA, or if any default hereunder, or to collect any amounts owing hereunder, or if an arbitration proceeding is commenced by agreement of the Parties to any dispute, the unsuccessful litigant in such action or proceeding shall reimburse the successful litigant therein for costs and expenses incurred by the successful litigant in connection with such action or proceeding and any appeals therefrom, including attorneys' fees and court costs.
- All remedies are cumulative and shall be deemed additional to any and all other remedies to which any Party may be entitled in law or in equity. Each Party shall also have the right to restrain by injunction any violation or threatened violation by any other Farty of any of the terms, covenants, or conditions of this OEA, or to obtain a decree to compel performance of any such terms, covenants, or conditions, it being agreed that the remedy at law for a breach of any such term, covenant, or condition (except those, if any, requiring the payment of a liquidated sum) is not adequate.
- 6.2 Interest. Any time a Party or Operator shall not pay any sum payable hereunder to another within five (5) days of the due date, such delinquent Party or Operator shall pay interest on such amount from the due date to and including the date such payment is received by the Person entitled thereto, at the lesser of: (i) the highest rate permitted by law to be paid on such type of obligation by the Person obligated to make such payment or the Person to whom such payment is due, whichever is less; or (ii) 3% per annum in excess of the prime rate from time to time publicly

-31-

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announced by Seattle-First National Bank (Main Office, Seattle) or its successor.

6.3 Estoppel Certificate. Each Party and Operator agrees that upon written request (which shall not be more frequent than three (3) times during any calendar year) of any other Party or Operator, it will issue to such Person, or its prospective Mortgagee or successor, an estoppel certificate stating to the best of the issuer's knowledge that as of such date: (i) whether it knows of any default under this OEA by the requesting Person, and if there are known defaults, specifying the nature thereof; (ii) whether this OEA has been assigned, modified or amended in any way by it and if so, then stating the nature thereof; and (iii) whether this OEA is in full force and effect;

6.4 Notices.

All notices, demands and requests (collectively the "notice") required or permitted to be given under this OEA must be in writing and may be given by registered or certified U.S. mail, return receipt requested, by messenger delivery or by telecopy (if followed by hard copy) and shall be deemed to have been given as of the date such notice is (i) delivered to the Party intended, (ii) delivered to the then current address of the Party intended, or (iii) rejected at the then current address of the Party intended, provided such notice was sent prepaid. The initial addresses of the Parties shall be:

Target:

Dayton Hudson Corporation
Target Stores-Real Estate
Attn: Property Administration

33 S. Sixth Street
Minneapolis, MN 55402
Telecopy No. (612) 370-6008

Developer:

c/o Winmar Company, Inc.

700 Fifth Avenue

Suite 2600

Seattle, WA 98104-5026 Attn: Property Management Telecopy No. (206) 223-4565

Operator:

As from time to time designated.

Upon at least ten (10) days prior written notice, each Person shall have the right to change its address to any other address within the United States of America.

6.5 Approval Rights. Unless otherwise herein provided, whenever a consent, or approval (the "approval") is required, such

-32-

1256/054:06/04/91:MSC545

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VOL 998 PAGE 456

approval shall not be unreasonably withheld or delayed. Unless provision is made for a specific time period, each response to a request for an approval shall be given by the Person to whom directed within thirty (30) days of receipt. Each disapproval shall be in writing and the reasons for such disapproval shall be clearly stated. If a response is not given within the required time period, the requested Party shall be deemed to have given its approval.

- 6.6 Condemnation. In the event of a condemnation or a sale in lieu thereof concerning a portion or all of the Shopping Center, the award or purchase price paid for such taking shall be paid to the Party owning such land so taken; it being the intent of any other Party who might have an easement or other property interest or right under this OEA in the land so taken, to release and/or waive such property interest or right with respect to such award or purchase price; provided, however, such other Party shall have the right to seek an award or compensation for the loss of its easement right or property interest to the extent such award or compensation paid or allocated for such loss does not reduce or diminish the amount paid to the Party owning such land. Notwithstanding the above, Section 6.6 is not intended to alter any other agreement which may exist between the owner of the land so taken and any person having an interest in said land pursuant to other contractual relationships.
- 6.7 <u>Binding Effect</u>. The terms of this OEA and all easements granted hereunder shall constitute covenants running with the land and shall inure to the benefit of and be binding upon the signatories hereto and their respective successors and assigns who become Parties hereunder. This OEA is not intended to supersede, modify, amend, or otherwise change the provisions of any prior instrument affecting the land burdened hereby.
- 6.8 <u>Singular and Plural</u>. Whenever required by the context of this OEA, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa.
- 6.9 <u>Counterparts and Signatures Pages</u>. This OEA may be executed in several counterparts, each of which shall be deemed an original. The signatures to this OEA may be executed and notarized on separate pages, and when attached to this OEA shall constitute one complete document.
- 6.10 <u>Negation of Partnership</u>. None of the terms or provisions of this OEA shall be deemed to create a partnership between or among the Parties in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. Each Party shall be considered a separate

-33-

1256/054:06/04/91:MSC545

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owner, and no Party shall have the right to act as an agent for another Party, unless expressly authorized to do so herein or by separate written instrument signed by the Party to be charged.

- 6.11 Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Shopping Center or of any Tract or portion thereof to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no rights, privileges or immunities of any Party hereto shall inure to the benefit of any third-party Person, nor shall any third-party Person be deemed to be a beneficiary of any of the provisions contained herein.
- 6.12 Excusable Delays. Whenever performance is required of any Person hereunder, such Person shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing or other labor disputes, unavailability of labor or materials, damage to work in progress by reason of fire or other casualty, or any cause beyond the reasonable control of such Person, then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused. The provisions of this section shall not operate to excuse any Person from the prompt payment of any monies required by this OEA when required hereunder.
- 6.13 <u>Severability</u>. Invalidation of any of the provisions contained in this OEA, or of the application thereof to any person by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other person and the same shall remain in full force and effect.
- 6.14 Amendments. This OEA may be amended by, and only by, a written agreement signed by all of the then current Parties and shall be effective only when recorded in the county and state where the Shopping Center is located. No consent to the amendment of this OEA shall ever be required of any Occupant or Person other than the Parties, nor shall any Occupant or Person other than the Parties have any right to enforce any of the provisions hereof.
- 6.15 Captions and Capitalized Terms. The captions preceding the text of each article and section are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of this OEA. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this OEA.

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.VOL 998 PAGE 458

- 6.16 Mitigation of Damages. In all situations arising out of this OEA, all Parties shall attempt to avoid and mitigate the damages resulting from the conduct of any other Party. Each Party hereto shall take all reasonable measures to effectuate the provisions of this OEA.
- 6.17 CEA Shall Continue Notwithstanding Breach. expressly agreed that no breach of this OEA shall (i) entitle any Party to cancel, rescind or, otherwise terminate this OEA, or (ii) defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to any part of the Shopping Center. However, such limitation shall not affect in any manner any other rights or remedies which a Party may have hereunder by reason of any such breach.
 - 6.18 Time. Time is of the essence of this OEA.
- The failure of any Party to insist upon 6.19 No Waiver. strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which that Party may have hereunder, at law or in equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

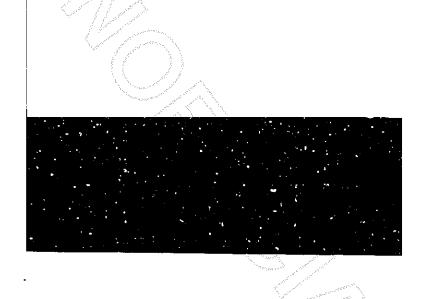
6.20 <u>Developer Purchase Right</u>.

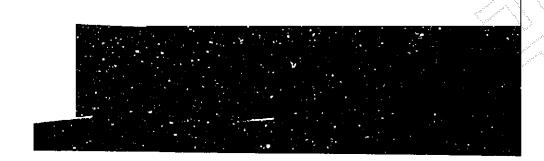
(a) If after Target constructs its building on its Tract (the "Building") and first opens for business, Target ceases the regular conduct of business in the Building provided that Target shall not be deemed not to be regularly conducting business if the ASTAN store on the Target Parcel is temporarily not open for business solely by reason of either (i) renovation or remodeling (but not in excess of twelve (12) consecutive months), or (ii) reconstruction of the Target Building as a result of damage or destruction (but not in excess of fifteen (15) months), or (iii) any other reason for a period of six (6) consecutive months. Developer shall have the option at any time thereafter to require Target to resell its Tract, inclusive of Building, to Developer at the Tract's then fair market value. Prior to exercising its option to purchase as set forth in this Section, Developer shall give Target sixty (60) days notice after the expiration of the applicable period of its intent to exercise this option, at which time Target shall have the right to reopen its Building. Closing of the transaction shall occur in escrow with First American Title Insurance Company, Mount Vernon, Washington (the "Escrow Agent") or its successor within sixty (60) days after Fair Market Value has been determined, with Target to pay all excise and conveyance taxes, the premium for an owner's standard policy of title insurance in the face amount of the purchase price and one-half of Escrow Agent's fee, and Developer to pay the cost of recording the deed, one-half of the Escrow Agent's

-35-

1256/054:06/04/91:MSC545

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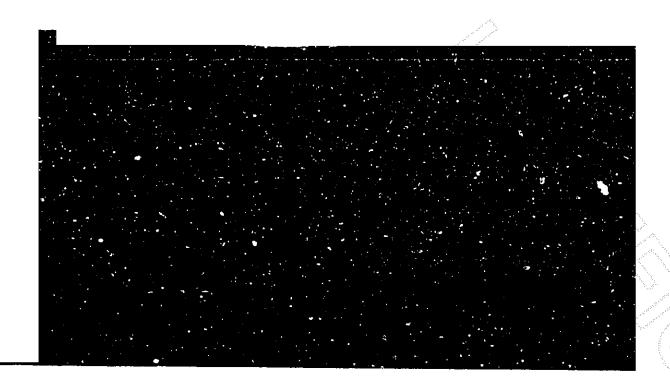
fee and the cost of any title policy upgrades and endorsements requested by Developer. Title shall be conveyed by Statutory Warranty Deed, free from deeds of trust, mortgages, local improvement district assessments and other monetary encumbrances. If Developer exercises its purchase option, it shall include in its written notice to Target reflecting such exercise Developer's proposed all cash purchase price for the Target Tract. Target shall advise Developer in writing within fifteen (15) days of the receipt of Developer's notice whether Target is willing to accept Developer's proposed purchase price and, if it is not, shall state the selling price which Target is prepared to accept. If Target and Developer are not in agreement on price, they shall attempt to reach agreement on price through negotiation for a thirty (30) day period.

(b) If the parties are unable to reach agreement on price during the period specified in Section 6.20(a), then within ten (10) days thereafter either party may advise the other in writing of the name and address of its arbitrator. The arbitrator shall be qualified as a real estate appraiser with at least five (5) years of experience in appraising commercial real property in Skagit County, Washington who would qualify as an expert witness. Within ten (10) business days after receipt of such notice from the initiating party (the "Instigator") designating its arbitrator, the other party (the "Recipient") shall give notice to Instigator, specifying the name and address of the person designated by Recipient to act as arbitrator on its behalf who shall be similarly If Recipient fails to notify Instigator of the qualified. appointment of its arbitrator, within or by the time above specified, then the arbitrator appointed by Instigator shall be the arbitrator or determine the issue. The duty of the arbitrator(s) shall be to determine the Fair Market Value. If the two (2) arbitrators are so chosen the arbitrators so chosen shall meet within ten (10) business days after the second arbitrator is appointed and, if within ten (10) business days after such first meeting the two arbitrators shall be unable to agree promptly upon a determination of the fair market value of the Property ("Fair Market Value"), they, themselves, shall appoint a third arbitrator, who shall be a competent and impartial person with qualifications similar to those required of the first two arbitrators. are unable to agree upon such appointment within five (5) business days after expiration of said ten (10) day period, the third arbitrator shall be selected by the parties themselves, if they can agree thereon, within a further period of ten (10) business days. If the parties do not so agree, then either party, on behalf of both, may request appointment of such a qualified person by the then presiding judge of Skagit County Superior Court acting in his or her private non-judicial capacity, and the other party shall not raise any question as to such Judge's full power and jurisdiction to entertain the application for and make the appointment, and the

-36-

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parties agree to indemnify and hold the presiding judge fully and completely harmless from and against all claims arising out of the presiding judge's appointment of an arbitrator. The three (3) arbitrators shall decide the dispute, if it has not been previously resolved, by following the procedure set forth in this Section. Where the issue cannot be resolved by agreement between the two arbitrators selected by Instigator and Recipient or settlement between the parties during the course of arbitration, the issue shall be resolved by the three arbitrators in accordance with the following procedure. The arbitrators selected by each of the parties shall state in writing his or her determination of the Fair Market Value supported by the reasons therefor with counterpart copies to each party. The arbitrators shall arrange for a simultaneous exchange of such proposed resolutions. The role of the third arbitrator shall be to select which of the two proposed resolutions most closely approximates his or her determination of Fair Market Value. The third arbitrator shall have no right to propose a middle ground or any modification of either of the two proposed resolutions. The resolution he or she chooses as most closely approximating his or her determination shall constitute the decision of the arbitrators and be final and binding upon the parties.

(i) In the event of a failure, refusal or inability of any arbitrator to act, his or her successor shall be appointed by him, but in the case of the third arbitrator, his or her successor shall be appointed in the same manner as provided for appointment of the third arbitrator. The arbitrators shall attempt to decide the issue within ten (10) business days after the appointment of the third arbitrator. Any decision in which the arbitrator appointed by Developer and the arbitrator appointed by Target concur shall be binding and conclusive upon the parties. Each party shall pay the fee and expenses of its respective arbitrator and both shall share equally the fee and expenses of the third arbitrator, if any, and the attorneys' fees and expenses of counsel for the respective parties and of witnesses shall be paid by the respective party engaging such counsel or calling such witnesses.

(ii) The arbitrators shall have the right to consult experts and competent authorities with factual information or evidence pertaining to a determination of Fair Market Value, but any such consultation shall be made in the presence of both parties with full right on their part to cross-examine. The arbitrators shall render their decision and award in writing with counterpart

-37-

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VOL 998 PAGE 461

copies to each party. The arbitrators shall have no power to modify the provisions of this Agreement.

ARTICLE VII

7.1 Term of this OEA. This OEA shall be effective as of the date first above written and shall continue in full force and effect until 11:59 p.m. on December 31, 2031; provided, however, that the easements referred to in Article II hereof which are specified as being perpetual or as continuing beyond the term of this OEA shall continue in force and effect as provided therein. Upon termination of this OEA, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of this OEA, except as relates to the easements mentioned above, shall terminate and have no further force or effect; provided, however, that the termination of this OEA shall not limit or affect any remedy at law or in equity that a Party may have against any other Party with respect to any liability or obligation arising or to be performed under this OEA prior to the date of such termination.

IN WITNESS WHEREOF, the Parties have caused this OEA to be executed effective as of the day and year first above written.

WINMAR CASCADE, INC. ("Developer")	DAYTON HUDSON CORPORATION ("Target")
By Easi 2.45	By Schlane
Name President Title Vice-President	Name Jayk/D. Fondame Title St/Vice President 1ST AM
ATTEST O.	ATTEST:
By 8 HOS	By William Kul
Name D. S. Haskins Title Treasurer	Name William P.Hise Title Assistant Secretary

-38-

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STATE OF WASHINGTON)
COUNTY OF KING)
On this day of, 1991, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally, appeared, known to me to Eddie L. Hendrikson and, known to me to
be the <u>President</u> and <u>President</u> of WINMAR CASCADE, INC., the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the purposes therein mentioned, and on oath stated that they were authorized to execute said instrument.
I certify that I know or have satisfactory evidence that the persons appearing before me and making this acknowledgment are the persons whose true signatures appear on this document.
WITHERANE ROCKE and official seal hereto affixed the day and year in the centsic make written.
NOTARY PUBLIC Name Brene
STATE OF WASHINGTON NOTARY PUBLIC in and for the State of
My commission expires Liphi 20, 1994. STATE OF Linnesota) ss.
COUNTY OF Hennepin)
On this /8th day of June, 1991, before me, the undersigned, a Notary Public in and for the State of Minnesofa, duly
commissioned and sworn personally appeared known to me to be
of DAYTON HUDSON CORPORATION, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the purposes therein mentioned, and on oath stated that they were authorized to
execute said instrument.
I certify that I know or have satisfactory evidence that the persons appearing before me and making this acknowledgment are the persons whose true signatures appear on this document.
witness my hand and official seal hereto affixed the day and year in the certificate above written.
LAUPA R. MILLER NOTARY PUBLIC in and for the State of HENNEPIN COUNTY My Comm. Expres Dec 15, 1884 My commission expires My commission expires My commission expires
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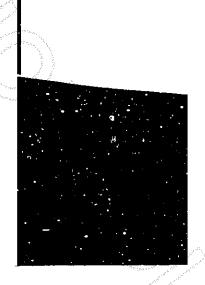


EXHIBIT A

Leonard and Boudinot

PROFESSIONAL ENGINEERS and LAND SURVEYORS

JOHN E. LEONARD, JR., P.E. & P.L.S. POBERT C. BOUDINOT, JR., P.E. JEFFREY A. SKODJE, P.L.S.

May 31, 1991

Job No. 90280

LEGAL DESCRIPTION FOR: Winmar Cascade, Inc.

TARGET:

That portion of the Northeast quarter of Section 6, Township 34 North, Range 4 East, W.M., being more particularly described as follows:

Commencing at the East quarter corner of said Section 6; thence North 0°17'42" East along the East line of said subdivision, 657.12 feet, to a point that is 10 feet South as measured at right angles from the North line of the South half of the southeast quarter of said Northeast quarter of Section 6; thence North 88 59'14" West, 10 feet South and parallel with said North line, 609.70 feet to the TRUE POINT OF BEGINNING; thence South 1°00'46" West, 29.00 feet; thence South 1°24'07" East, 23.02 feet; thence South 1°00'46" West, 125.00 feet; thence North 88°59'14" West, 10.83 feet; thence South 1°00'46" West, 167.17 feet; thence South 88°59'14" East, 6.33 feet; thence South 1°00'46" West, 44.22 feet; thence North 50°37'51" East, 165.79 feet; thence South 0°17'42" West, 93.34 feet; thence South 89°42'21" East, 51.97 feet; thence South 0°17'42" West, 225.57 feet to the intersection with the South line of 187 AK Tract 2 of the Boundary Line Adjustment recorded in Book 10 of Surveys at Pages 51 and 52, under Auditor's File No. 9007100003, records of Skagit County, Washington; thence North 88°50'37" West, along said South line, 326.82 feet to the beginning of a curve to the left; thence along the curve to the left having a radius of 125.50 feet through a central angle of 24°11'40" an arc distance of 52.99 feet; thence South 66°57'43" West, along said South line of Tract 2, a distance of 111.61 feet; thence North 88°50'40" West, along said South line, 121.19 feet to the Southwest corner of said Tract 2; thence North 0°08'10" East, along the West line of said Tract 2, a distance of 654.55 feet to a point which is 10 feet South, as measured at right angles from the North line of said South half of the Southeast quarter of the Northeast quarter; thence South 88°59'14" East, parallel with said North line, 432.70 feet to the TRUE POINT OF BEGINNING.

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VOL 998 PAGE 463

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Offices: 603 South First Street, Mount Vernon, WA 98273 606 Commercial Avenue, Anacortes, WA 98221

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Leonard and Boudinot

PROFESSIONAL ENGINEERS and LAND SURVEYORS

JOHN E. LEONARD, JR., P.E. & P.L.S.
ROBERT C. BOUDINOT, JR., P.E.
JEFFREY A. SKODJE, P.L.S.

May 31, 1991

Job No. 90280

LEGAL DESCRIPTION FOR: Winmar Cascade, Inc.

DEVELOPER'S PARCEL:

That portion of the Northeast quarter of Section 6, Township 34 North, Range 4 East, W.M., being more particularly described as follows:

Commencing at the East quarter corner of said Section 6; thence North 0°17'42" East along the East line of said subdivision, 657.12 feet, to a point that is 10.00 feet South as measured at right angles to the North line of the South half of the Southeast quarter of said Northeast quarter of Section 6; thence North 88°59'14" West, parallel with said North line, 69.75 feet to the intersection of the West line of that certain tract of land conveyed to the CITY OF BURLINGTON under Auditor's File No. 8604020016 (hereafter known as the "City Tract"), being Burlington Boulevard (formerly known as Garl Street), said intersection being the TRUE POINT OF BEGINNING; thence continuing North 88°59'14" West, 540.05 feet; thence South 1°00'46" West, 29.00 feet; thence South 1°24'07" East, 23.02 feet; thence South 1°00'46" West, 125.00 feet; thence North 88°59'14" West, 10.83 feet; thence South 1°00'46" West, 167.17 feet; thence South 88°59'14" East, 6.33 feet; thence South 100'46" West, 44.22 feet; thence North 50°37'51" East, 165.79 feet; thence South 0°17'42" West, ISTAN 93.34 feet; thence South 89°42'21" East, 51.97 feet; thence South 0°17'42" West, 225.57 feet to the intersection of the South line of Tract 2 of the Boundary Line Adjustment recorded in Book 10 of Surveys at Pages 51 and 52, under Auditor's File No. 9007100003, records of Skagit County, Washington; thence South 88°50'37" East, along said South line, 147.96 feet; thence North 0°17'42" East, 25.50 feet; thence North 24°05'48" West, 27.67 feet; thence North 0°17'42" East, 168.00 feet; thence South 89°42'21" East, 145.00 feet; thence South 76°11'58" East, 25.81 feet; thence South 89°42'21" East, 81.95 feet to the Westerly margin of said "City Tract"; thence North 0°17'42" East, along said Westerly margin, 364.19 feet, to the beginning of a curve to the left; thence along the arc of said curve to the left, having a radius of 20.00 feet through a central angle of 89°16'56" an arc distance of 31.17 feet to the TRUE POINT OF BEGINNING.

VOL 998 PAGE 465

9108010068

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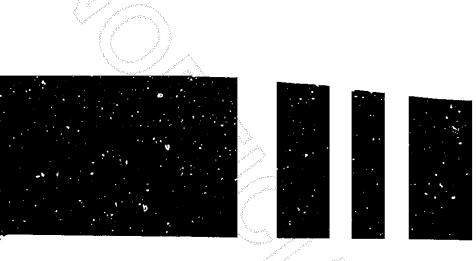


EXHIBIT B

Legal Description for Winmar Cascade, Inc. Developer's Parcel May 31, 1991 Page 2 of 2

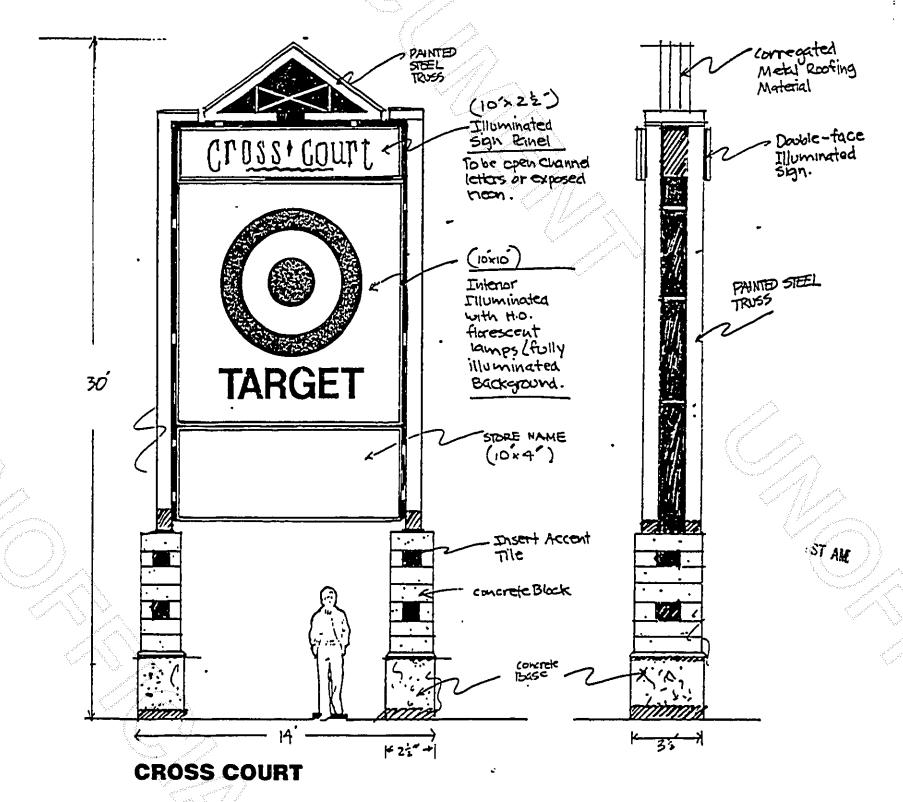
TOGETHER WITH that portion of the Northeast quarter of Section 6, Township 34 North, Range 4 East, W.M., being more particularly described as follows:

Commencing at the East quarter corner of said Section 6; thence North 0°17'42" East along the East line of said subdivision, 273.81 feet; thence North 89°42'21" West, 50.00 feet, to the intersection with the West line of that certain tract of land conveyed to the CITY OF BURLINGTON under Auditor's File No. 8604020016 (hereafter known as the "City Tract"), being Burlington Boulevard (formerly known as Garl Street) and the TRUE POINT OF BEGINNING; thence continue North 89°42'21" West, 81.95 feet; thence North 76°11'58" West, 25.81 feet; thence North 89°42'21" West, 145.00 feet; thence South 0°17'42" West, 168.00 feet; thence South 24°05'48" East, 27.67 feet; thence South 0°17'42" West, 25.50 feet to the intersection of the South line of Tract 2, as per Boundary Line Adjustment recorded in Book 10 of Surveys, at Pages 51 and 52, under Auditor's File No. 9007100003, records of Skagit County, Washington; thence South 88°50'37" East, along said South line, 222.53 feet, to the beginning of a curve to the left; thence along the arc of said curve to the left, having a radius of 29.50 feet through a central angle of 37°39'38" an arc distance of 19.39 feet to the intersection of the West right-of-way margin of said "City Tract"; thence North 0°17'42" East along the West line of said "City Tract," 210.15 feet to the TRUE POINT OF BEGINNING.

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IST ANS

EXHIBIT C



CONCEPTUAL SITE IDENTIFICATION PYLON SIGN

MAY 15, 1991

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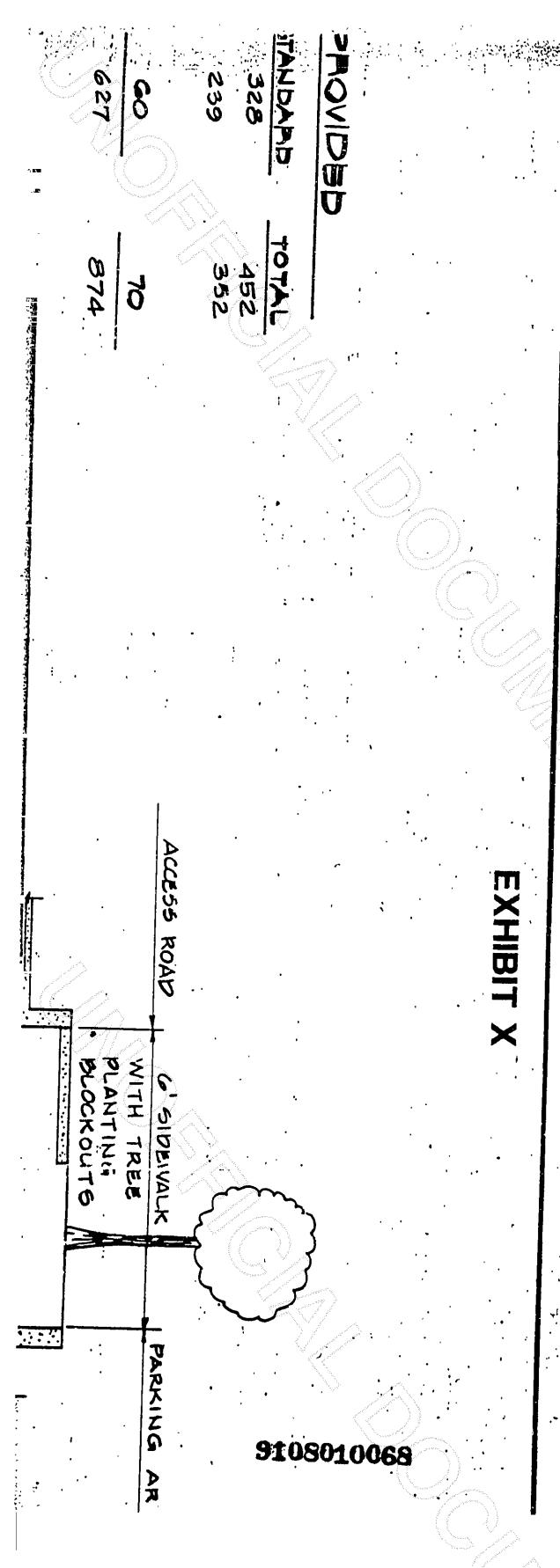
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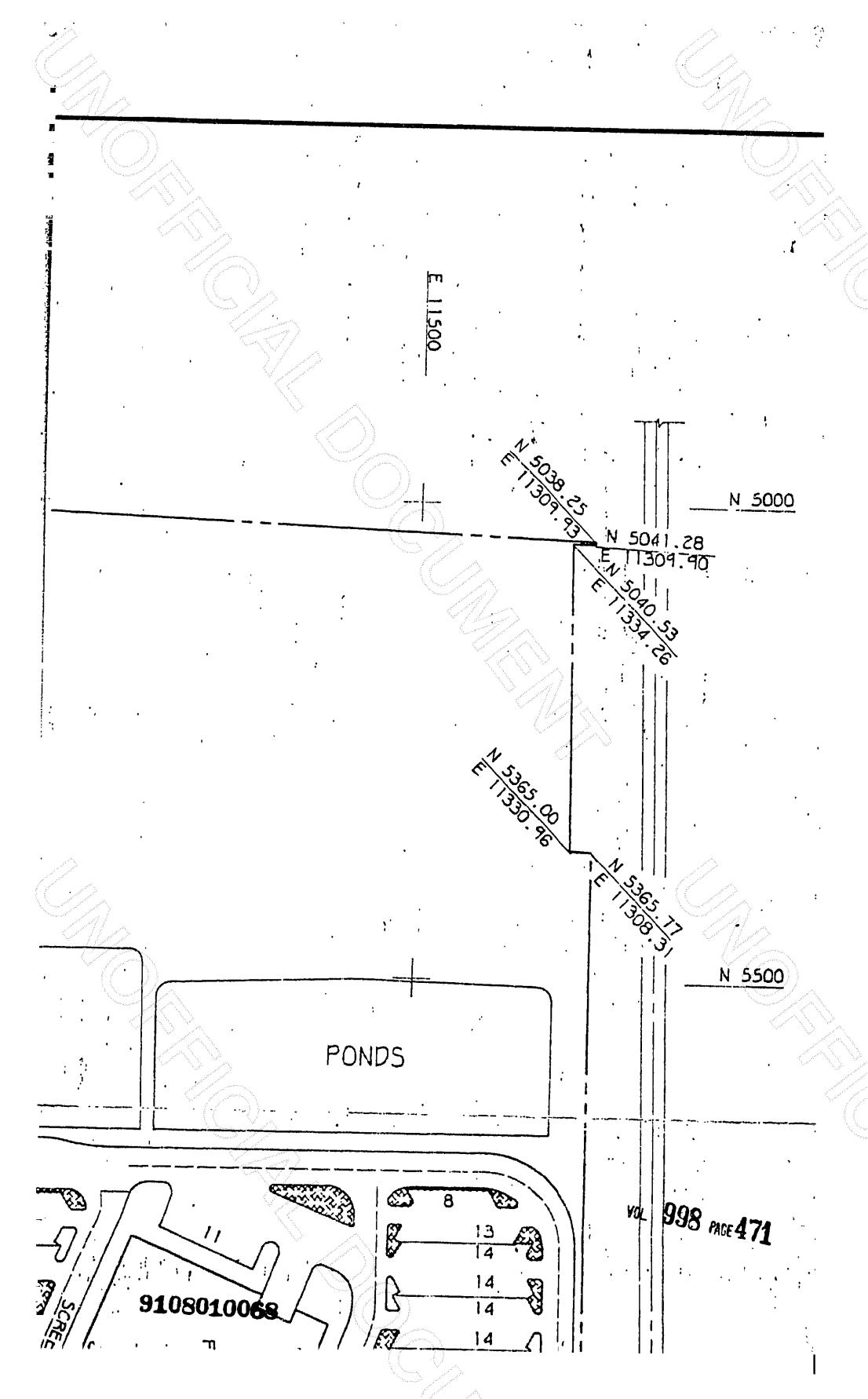
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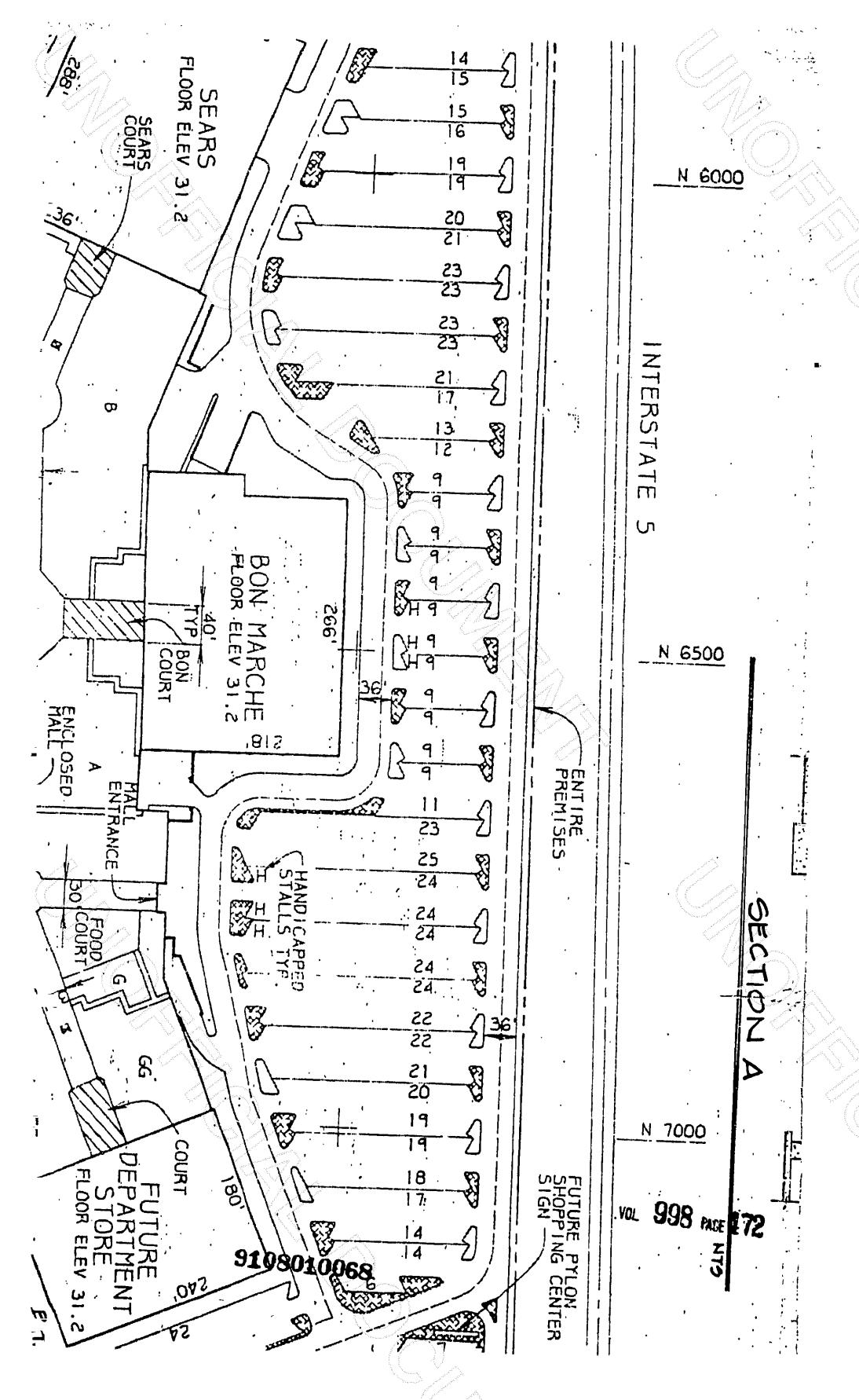


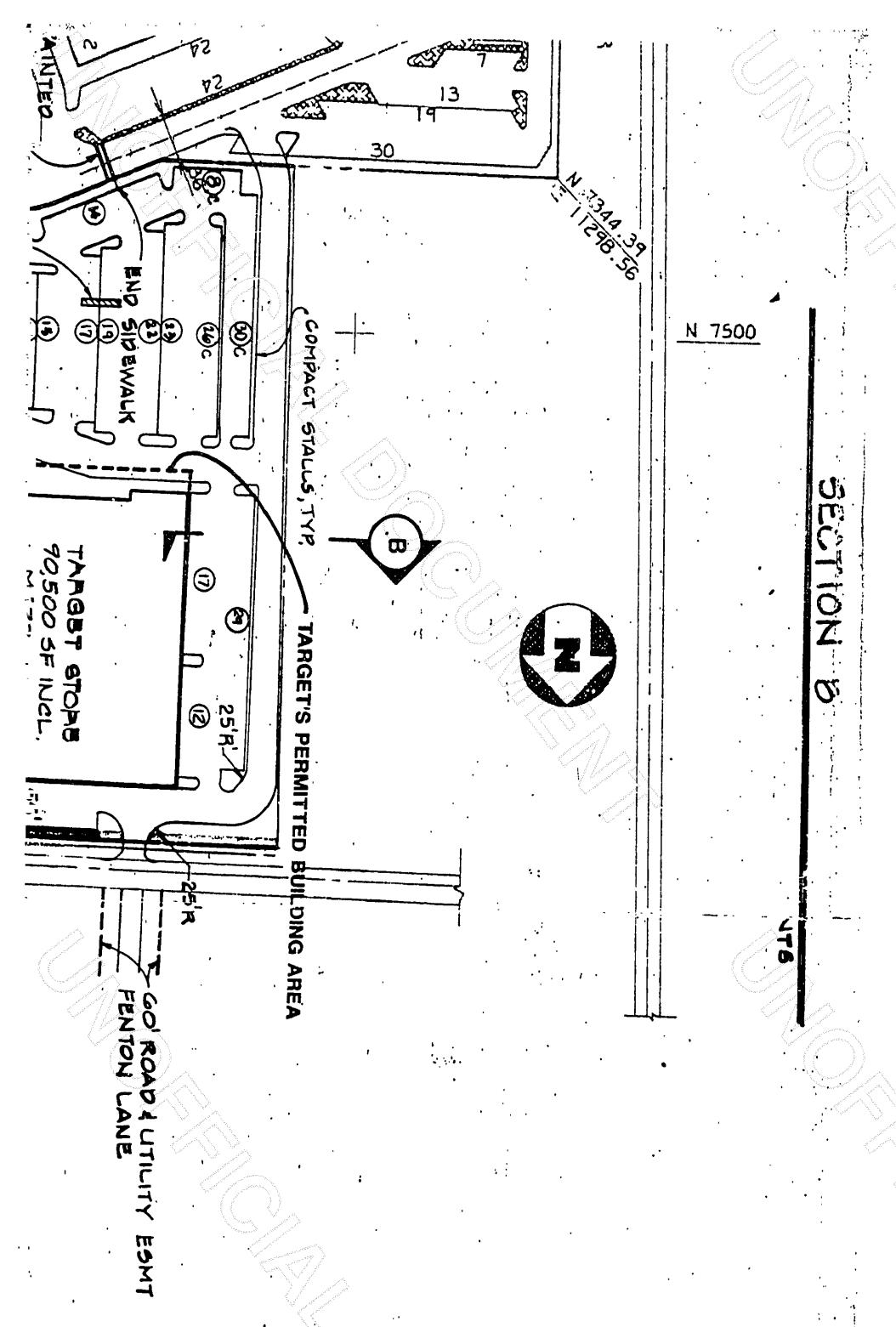
VOL 998 PAGE 469

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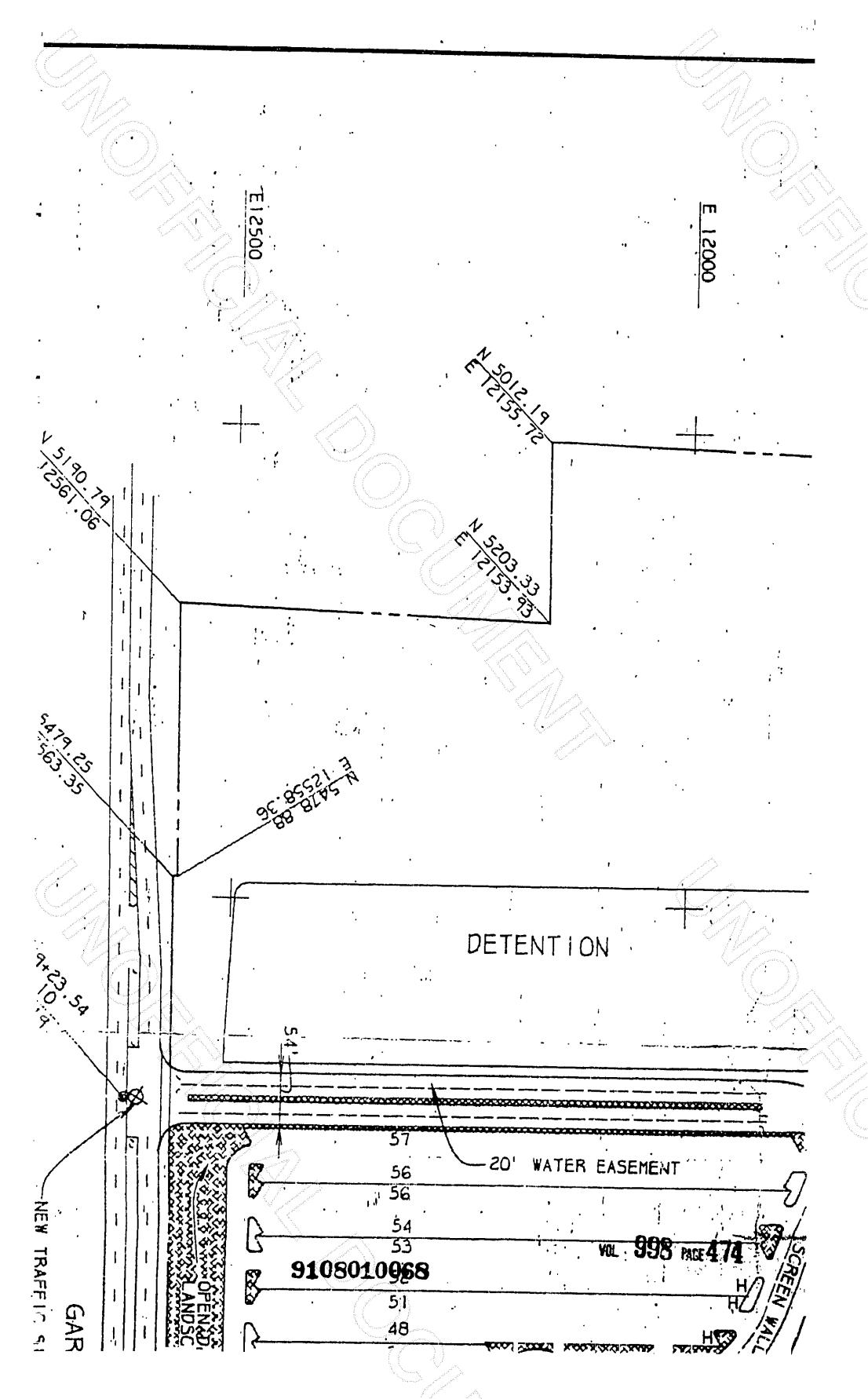
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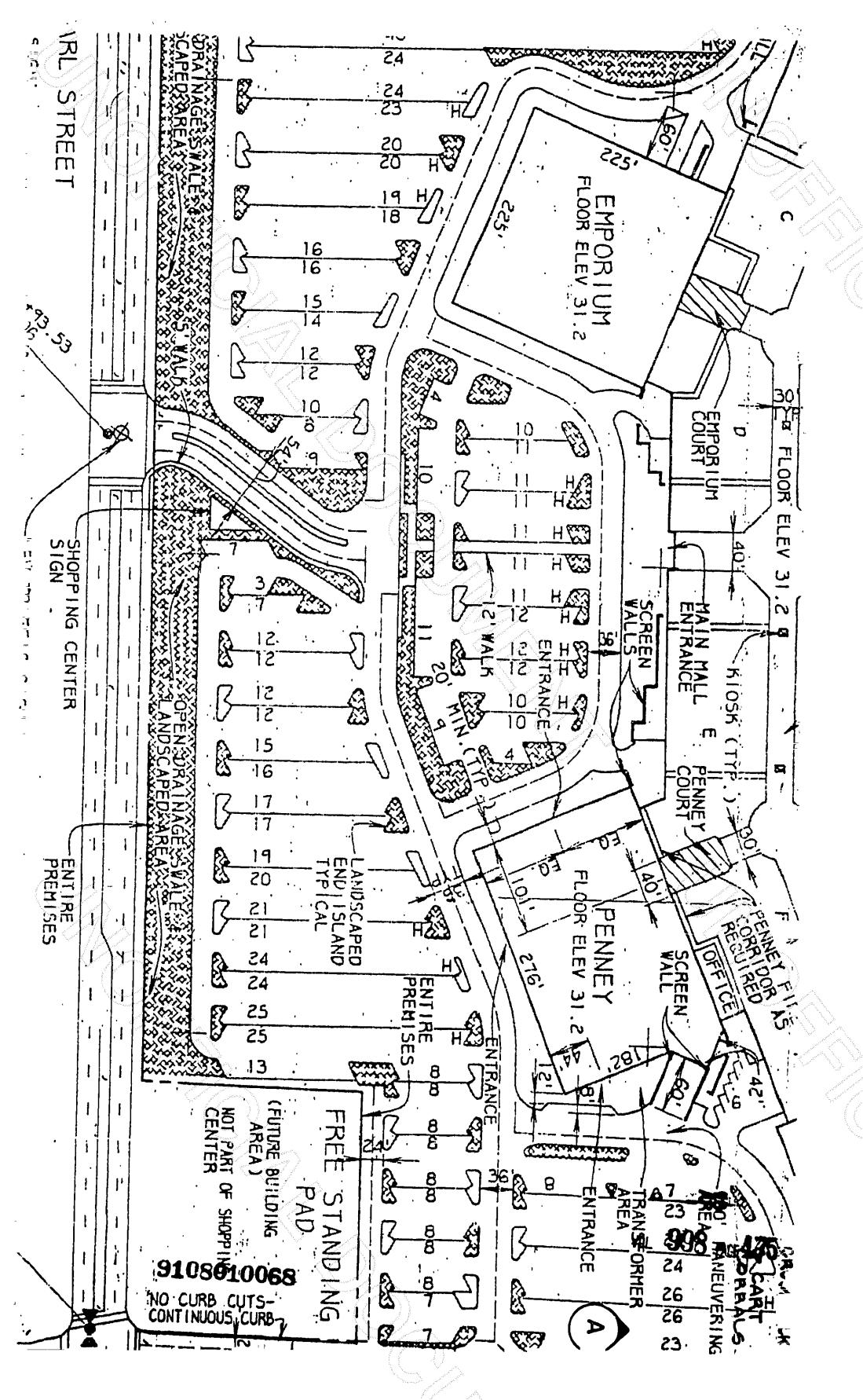


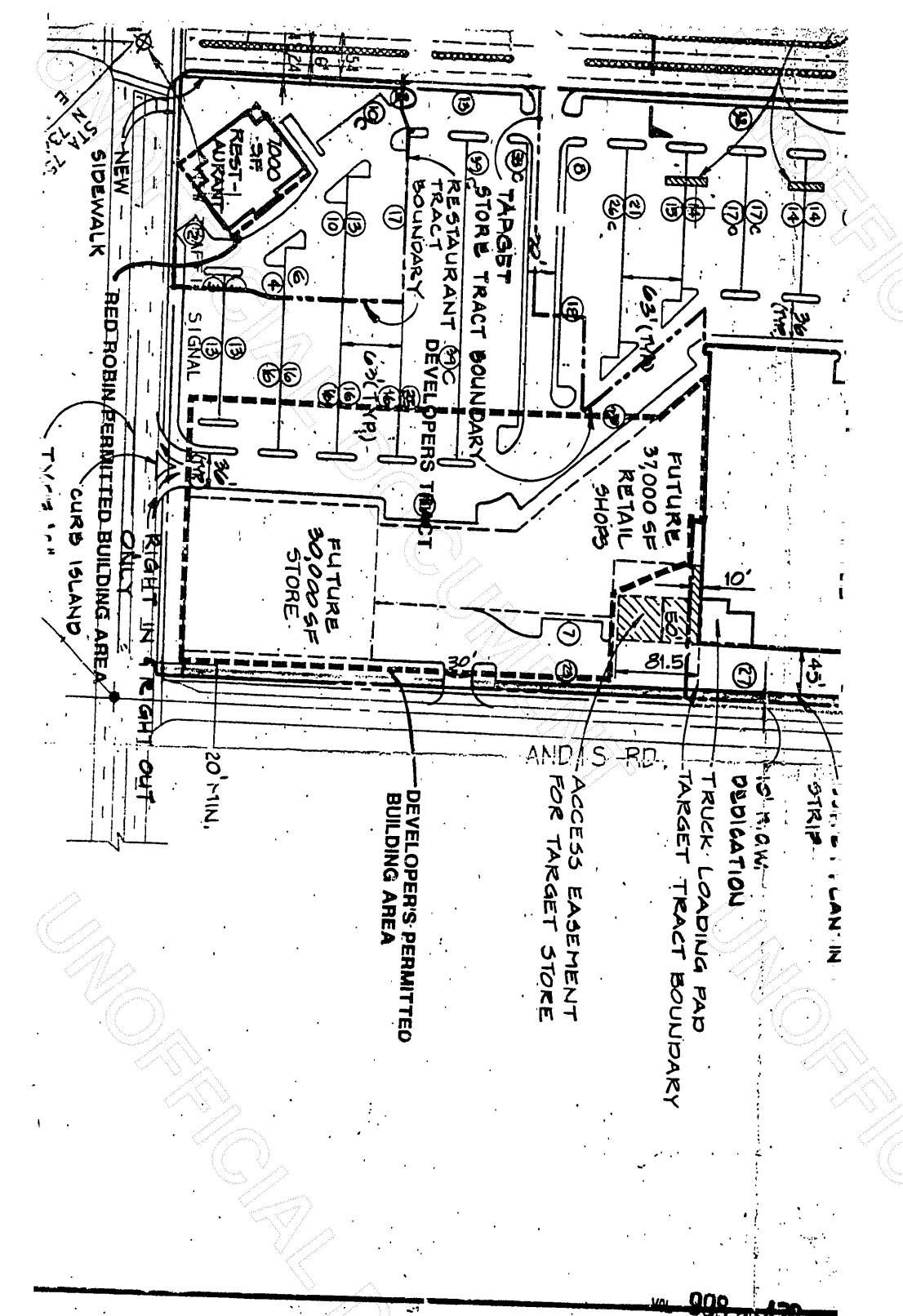




VOL 998 PAGE 473







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VOL 998 PAGE 478

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VOL 998 PAGE 479

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