

WHEN RECORDED, MAIL TO:

Angelo Gaspare
P. O. Box 4008
Covina, California 91723

SECURITY TITLE COMPANY

2-724 12633
51-724

COVENANTS FOR OPERATION,
MAINTENANCE AND RECIPROCAL EASEMENTS

Between

ANGELO GASPARE

an individual

and

SKAGGS PROPERTIES, INC.

a Delaware corporation

DATE: June 5, 1981

LOCATION: South Main and Fir Streets
Cedar City, Utah

Store Number 272.

228617
Recorded at Sec. Title Co. of So. Utah
Request of _____
Date JUL 16 1981 Time 9 a.m.
Fee 47.50 Book 278 Page 298-340
By CORA J. HULET, IRON COUNTY RECORDER
Ret'd Indx'd Abst'd Proof

TABLE OF CONTENTS

| | <u>Page</u> |
|---|-------------|
| 1. Definitions | 2 |
| 1.1 Owner | 2 |
| 1.2 Owner of Parcel I | 2 |
| 1.3 Owner of Parcel II | 2 |
| 1.4 Owner of Parcel III | 3 |
| 1.5 Skaggs Affiliate | 3 |
| 2. Uses and Restrictive Covenants | 3 |
| 2.1 Commercial Purposes | 3 |
| 2.2 Building Area | 4 |
| 2.3 Common Area | 4 |
| 3. Easements. | |
| 3.1 Use of Common Area | 5 |
| 3.2 Description of Easements | 8 |
| 3.3 Utility Easements | 8 |
| 3.4 No Walls, Fences or Barriers | 10 |
| 4. Maintenance/Taxes | 11 |
| 4.1 Common Area Maintenance | 11 |
| 4.2 Damage or Destruction | 12 |
| 4.3 Property Taxes | 12 |
| 5. Parking Ratio | 13 |
| 6. Insurance/Indemnification | 13 |
| 6.1 Indemnification of Owners | 13 |
| 6.2 Waiver of Certain Rights | 14 |
| 6.3 General Liability Coverage and Limits | 14 |
| 6.4 Performance of Indemnity Agreements | 16 |
| 7. Signs | 17 |
| 8. Condemnation | 18 |
| 9. Construction of Shops on Parcel III | 19 |
| 10. Extinguishment of Temporary Service Drive | 20 |
| 11. General Provisions | 20 |
| 11.1 Negation of Partnership | 20 |
| 11.2 Covenants Shall Run With the Land | 20 |
| 11.3 Termination; Amendment | 21 |
| 11.4 Enforcement | 21 |
| 11.5 Severability | 23 |
| 11.6 Headings | 23 |
| 11.7 Minimization of Damages | 23 |

| | | |
|-----|-------------------------------------|----|
| 12. | Attorneys' Fees | 23 |
| 13. | Execution in Counterparts | 23 |

EXHIBIT A

EXHIBIT B

300 # 228617

COVENANTS FOR OPERATION,
MAINTENANCE AND RECIPROCAL EASEMENTS

THIS AGREEMENT is made as of the 5th day of June, 1981, by and between ANGELO GASPARE, an individual ("Developer") and SKAGGS PROPERTIES, INC., a Delaware corporation ("Skaggs"), collectively referred to herein as the "Parties".

WHEREAS, this Agreement is made with respect to that certain real property located to the Southeast of the intersection of South Main and Fir Streets, Cedar City, County of Iron, State of Utah, as shown on the site plan attached hereto as Exhibit "A" and incorporated herein by this reference (the "Site Plan") and as is more particularly described on Exhibit "B" attached hereto and incorporated herein by this reference, which real property is hereinafter referred to as the "Shopping Center". Developer is the owner of those certain parcels of land within the Shopping Center which are designated as Parcel I and Parcel III on the Site Plan and Skaggs is or will be the owner of that certain parcel of land within the Shopping Center designated as Parcel II on the Site Plan, each of which parcels is more particularly described on Exhibit "B"; and

WHEREAS, Developer and K-MART CORPORATION, a Michigan corporation ("K-Mart") entered into that certain lease, dated May 13, 1980, with respect to Parcel I (the K-Mart Lease"), a Memorandum of which has been or will be recorded in the office of the County Clerk, Iron County, State of Utah. In connection therewith Developer will grant unto K-Mart all of the rights, privileges and easements herein created for the benefit of

Parcel I and K-Mart will consent to this Covenants For Operation, Maintenance and Reciprocal Easements by executing the consent attached hereto; and

WHEREAS, the Parties desire to subject each and every portion of the Shopping Center to the covenants, conditions and restrictions hereinafter set forth, and to provide for certain rights and easements in order that each owner, their tenants, subtenants and concessionaires, and the suppliers, customers, patrons, employees, and invitees thereof may freely use the Common Areas (as hereinafter defined) for the parking of automobiles and other light vehicles of transportation, and for the ingress and egress of pedestrians and such automobiles and other vehicles to and from the commercial and parking areas of the Shopping Center.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

1. Definitions

1.1 Owner. The term "Owner" or "Owners" means the Owner and/or Owners of Parcels I, II, and III as are hereinafter defined.

1.2 Owner of Parcel I. The term "Owner of Parcel I" means Developer and its respective assigns, grantees, and successors in interest having fee record title to all or any portion of Parcel I.

1.3 Owner of Parcel II. The term "Owner of Parcel II" means Skaggs and its respective assigns, grantees, and successors in interest having fee record title to all or any portion of Parcel II; and in the event that any Skaggs

Affiliate, as hereinafter defined, does not have record fee title to any portion of Parcel II but is leasing all or a portion of Parcel II pursuant to a lease, sale-leaseback, or other similar transaction giving the Skaggs Affiliate a right of occupancy to all or any portion of Parcel II, such Skaggs Affiliate shall also be deemed to be an Owner of Parcel II.

1.4 Owner of Parcel III. The term "Owner of Parcel III" means Developer and its respective assigns, grantees, and successors in interest having fee record title to all or any portion of Parcel III.

1.5 Skaggs Affiliate. The term "Skaggs Affiliate" means Skaggs and any parent, subsidiary, affiliated or related company of Skaggs.

2. Uses and Restrictive Covenants.

2.1 Commercial Purposes. The Shopping Center shall be used for commercial purposes only. Such purposes shall be limited to the construction, leasing, operation and maintenance of mercantile, business, service and professional establishments, and related facilities such as the Shopping Center Common Area. None of the following uses shall be conducted in the Shopping Center without the prior written consent of all Owners and K-Mart so long as it is a tenant of Parcel I: movie theaters, adult bookstores, bowling alleys, skating rinks, bars or taverns (except in restaurants), massage parlors, or the renting, leasing, or sale or displaying for the purposes of renting, leasing, or sale of any motor vehicles, boats or trailers. No Floor Area (as hereinafter defined) nor any mezzanine, located within that portion of the Building Area on Parcel III which is cross-hatched on the Site Plan shall be

used for school or office purposes (except offices incidental to and used in conjunction with a retail business); provided, that this provision shall not be construed to prohibit the use of such portion of Parcel III for offices which employ no more than one (1) person for each two hundred (200) square feet of Floor Area contained within such office.

2.2 Building Area. For the purpose of this Agreement, the Shopping Center is divided into two (2) categories which relate to use and are referred to herein as "Building Area" and "Common Area", respectively. Building Area includes areas within the Shopping Center that are labeled "Building Area" on the Site Plan and includes any expansion areas adjacent thereto. The construction, establishment and maintenance of buildings upon the Shopping Center shall be confined within the Building Area designated on the Site Plan. All buildings located within the Shopping Center shall be limited to one (1) story (excluding mezzanines). The total square footage of Floor Area (as hereinafter defined) of all buildings and other structures within any Building Area shall not exceed the square footage designated for such Building Area on the Site Plan. "Floor Area" shall include all floor area within the exterior surfaces of the exterior walls of any building or structure, excluding any mezzanine (to the extent it is not used for sales area), trash enclosures, loading docks, covered areas attached to loading docks, canopies and roof overhangs (including supporting columns or pillars). The designated square footage of Building Area for any parcel is only a limitation on maximum building size and imposes no obligation whatsoever on the Owner of such parcel to place, erect, or construct any building or structure thereon.

2.3 Common Area. "Common Area" includes all of the areas within the Shopping Center to be used in common for the benefit of Parcels I, II, and III and the Owners and occupants of every part thereof or interest therein. Common Area includes all areas within the Shopping Center not from time to time improved with buildings or other structures. The Common Area of the Shopping Center is shown on the Site Plan.

3. Easements.

3.1 Use of Common Area. The Common Area shall be used only for the following purposes related to the businesses and activities conducted in the Shopping Center:

(a) The parking of passenger vehicles and pedestrian and vehicular traffic of persons, firms or entities who possess or occupy the Shopping Center, or any part thereof or space therein, whether as owners, lessees, sublessees or concessionaires (but only during such period of possession and occupancy) including such use by their officers, directors, employees, agents, contractors, customers, invitees, and licensees (all of such persons entitled to use Common Area being referred to herein as "Entitled Users");

(b) Ingress and egress by any Entitled User, and the vehicles thereof, to and from any portion of the Common Area and the streets adjacent to the Common Area.

(c) The installation, maintenance and operation, within the confines of the Common Area, of public utilities services and appurtenances necessary for

servicing the Building and Common Areas, all of which shall, whenever reasonably feasible, be below the surface of the finished paving and other surface improvements. Any of the foregoing permitted installations which are located above the surface shall be located so that there shall be unimpeded access for vehicles and trucks to and from the loading areas of the buildings and to and from the streets to the loading areas of the buildings. The uses permitted by this subparagraph (c) are subject to and may only be utilized in accordance with the provisions of paragraph 3.3 hereof;

(d) The construction, maintenance, repair, replacement, rearrangement, and construction of parking sites or stalls, sidewalks, ramps, driveways, lanes, curbs, gutters, traffic control areas, signals, traffic islands, traffic and parking, lighting facilities, planters, planting boxes, edgers, sprinklers, valves, and landscape shrubbery, which shall not substantially affect or change the Common Area from that shown on the Site Plan; and provided, that any activity hereby permitted shall require the consent of the Owner upon whose parcel the same is to be done (and K-Mart if the activity is to be done on Parcel I and K-Mart is then a tenant of Parcel I), which consent shall not be unreasonably withheld.

(e) The ingress, egress, and temporary parking of delivery and service trucks and vehicles to and from the Building Area or any portion thereof and the streets adjacent to the Shopping Center, for the delivery of goods, wares, merchandise, furniture,

306 # 228617

fixtures, supplies, and equipment, and the rendition of services to any Entitled User;

(f) The installation, repair, replacement, and maintenance over, onto, and in the Common Areas, including the pedestrian sidewalks thereon, of the following: (i) building foundations; (ii) building canopies, canopy support columns, and roof overhangs; (iii) pilasters or other building columns or pillars. Building foundations and canopies may extend to other Building Areas with the prior written consent of the Owner (or K-Mart if the affected parcel is Parcel I and K-Mart is then a tenant of Parcel I) of the Building Area upon which such building foundation or canopy is to extend, which consent shall not be unreasonably withheld. The exercise of such uses shall not substantially affect or change the Common Area from that shown on the Site Plan and shall not materially alter the parking, configuration, or vehicular and pedestrian circulation in the Shopping Center or access to the entire Shopping Center from adjacent streets and between parcels within the Shopping Center from that shown on the Site Plan;

(g) The temporary use thereof (including erection of ladders, scaffolding and store front barricades thereon) during periods of construction, remodeling, or repair, and ingress and egress for construction equipment and vehicles transporting construction materials and equipment, upon the conditions, however, that all construction, remodeling or

307 #228617

repair of buildings and building appurtenances is diligently performed and such ladders, scaffolding, and barricades are promptly removed upon completion of such work; and further provided, that any such temporary use does not unreasonably interfere with the normal use of any parcel in the Shopping Center unless the prior written consent of the Owner whose parcel is affected is first obtained, and K-Mart if the affected parcel is Parcel I and K-Mart is then a tenant of Parcel I. The Owner undertaking any such construction, remodeling or repair shall restore and repair the Common Area improvements to their condition prior to the commencement of any such work.

3.2 Description of Easements. Each Owner grants to each other Owner easements appurtenant to each parcel owned by such other Owners for the uses enumerated in paragraph 3.1; and, in each instance, such easements shall be non-exclusive for the use by such other Owners in common with the granting Owner and the Entitled Users of the parcels of such other Owners and the granting Owner.

3.3 Utility Easements.

(a) Each Owner grants to each other Owner easements, to be exercised at the expense of the Owner benefited thereby, to connect to and continually use, for the benefit of and appurtenant to the benefited Owner's Parcel, any and all common storm drains, common utility lines, common sewers and other common services which have been installed in, to, under, upon, and over the Common Area of the parcel owned by the grantor of such easements.

(b) There shall be no interference with such common storm drains, common utility lines, common sewers, and other common services in the Shopping Center if such interference would disrupt the orderly development or operation of the business to be conducted on any Owner's parcel, except for the relocation thereof and the necessary maintenance and repair thereof after reasonable notice of the nature and extent of such relocation, maintenance and repair given to the Owner of the affected parcel, and K-Mart if the affected parcel is Parcel I and K-Mart is then a tenant of Parcel I. In the event such notice is given, the Owners (and K-Mart if K-Mart is then a tenant of Parcel I) shall have the option to require that such relocation, maintenance, and repair be carried on at such times as would minimize the disruption of the orderly development or operation of the Shopping Center and the party performing such relocation, maintenance, and repair work shall bear the cost of any overtime pay or other additional expense necessitated by such request.

(c) In the event it is necessary for any Owner to cause the installation of a storm drain, utility line, or sewer line or other similar service across the Common Area located on the Parcel of another Owner subsequent to the initial paving and improving of such Common Area, the other Owner shall not unreasonably withhold the granting of an additional easement or easements for such purpose; provided, however, that

such easement or easements shall not unreasonably interfere with normal operation of the business of such other Owner, and the Owner benefited thereby shall bear all costs related to the creation and improvement of such easement. Any such work of installation shall be conducted at such times and in such manner as to minimize the interference with normal operations of the business of such other Owner (and K-Mart if K-Mart is then a tenant of Parcel I) and any additional expense caused to minimize interference shall be borne by the Owner benefiting from such installation; provided, however, that no Owner shall be obligated to pay or incur overtime labor costs to complete any such installation unless the installation is conducted during the premium business time of thirty (30) days prior to Easter or thirty (30) days prior to Christmas. The Owner undertaking any such work of installation shall expeditiously prosecute to completion the utility work, and restore and repair the Common Area improvements to their condition prior to the commencement of any such work.

3.4 No Walls, Fences or Barriers. No walls, fences or other barriers shall be constructed or erected in the Common Area of the Shopping Center which would prevent or impair the use or exercise of the foregoing easements or the free access of pedestrians and vehicular traffic within the Shopping Center and to and from the adjacent streets; provided, however, that curb stops, or such other reasonable traffic controls as may be necessary to guide and control the orderly flow of traffic may

310 # 228617

be installed so long as the access driveways are not closed or blocked. The Owners specifically reserve the right to temporarily close all or any portion of such easement areas as may be deemed legally necessary and sufficient to prevent a dedication thereof or an accrual of any rights in any person other than as aforesaid or in the public generally therein. Any such temporary closing shall, however, be further subject to the reasonable consent of all Owners and K-Mart so long as K-Mart is a tenant of Parcel I.

4. Maintenance/Taxes.

4.1 Common Area Maintenance. Each Owner, at its own cost and expense, shall maintain or cause to be maintained, the Common Area on its respective parcel unless the Owners by separate written agreement provide for sharing expenses and responsibilities of such Common Area maintenance. The Common Area of each parcel shall at all times be maintained in a safe, sightly, and serviceable condition and repair, which maintenance shall include but shall not be limited to the following:

(a) Maintaining the surfaces in a smooth and evenly covered condition with the type of surfacing material originally installed, or such substitute as shall in all respects be equal in quality, use, and durability;

(b) Removing all standing water, papers, debris, filth, and refuse and thoroughly sweeping the Common Area to the extent reasonably necessary to keep the Common Area in a clean and orderly condition;

(c) Placing, keeping in repair, and replacing, when necessary, such parking lot lighting facilities as shall reasonably be required;

(d) Maintaining all landscaped areas and repairing automatic sprinkler systems or water lines in the Common Area and making replacements of shrubs and other landscaping as is necessary; and

(e) Maintaining and repairing any and all common storm drains, utility lines, sewers and other common utility systems and services which are necessary for the operation of the buildings and improvements within the Shopping Center.

4.2 Damage or Destruction. In the event any building in the Shopping Center is damaged or destroyed by fire or other casualty or any other cause whatsoever, the Owner of the parcel upon which such building is located may, in its discretion, tear down or rebuild the damaged building. However, if the Owner determines to tear down a damaged building, such Owner shall either rebuild on the same location or leave and maintain the parcel of land on which the building was located in a smooth, level condition, free and clear of all refuse, and sealed against dust. In the event that the Common Area of the Shopping Center or any portion thereof shall be damaged or destroyed by fire or other casualty or any other cause whatsoever, the Owner of the Common Area so damaged or destroyed shall forthwith proceed with due diligence to restore such Common Area to a condition to permit free and safe vehicular parking and vehicular and pedestrian access and circulation (in the manner required by this Agreement) within the Shopping Center and to and from all adjacent streets.

4.3 Property Taxes. The Owners shall pay, or cause to be paid, directly to the tax collector, prior to

312 #218617

delinquency all real property taxes and other special taxes and assessments which may be levied or assessed against the parcel owned by such Owner, including any assessment attributable to its appurtenant interests created by this Agreement, subject to the right of any Owner and any tenants of any Owner, if its lease so provides (and specifically including K-Mart so long as K-Mart is a Tenant of Parcel I), to contest such taxes and assessments in the manner provided by law.

5. Parking Ratio.

The Owners of all or any portion of the Shopping Center shall maintain within their respective parcels the minimum number of automobile parking spaces as are designated for each parcel on the Site Plan; provided that the parking spaces shown on the Site Plan within the area designated "Expansion Area" on Parcel I may be eliminated at such time as construction commences within such Expansion Area. The Common Area within the Shopping Center shall not be materially altered or rearranged from that shown on the Site Plan without the prior written consent of all Owners and K-Mart, so long as K-Mart is a tenant of Parcel I.

6. Insurance/Indemnification.

6.1 Indemnification of Owners. Each Owner and K-Mart agrees to indemnify, hold harmless and defend all other Owners and K-Mart from all claims, actions, liabilities, damages, expenses, and judgments arising from any injury to persons, loss of life or damage to property occurring on any parcel owned or occupied by each such indemnifying Owner and K-Mart (including within any building located thereon) and on the streets and sidewalks adjacent thereto or arising from or

313 #228617

connected with the use, non-use, condition, or occupation of such parcel, parcels, streets or sidewalks, which are not solely caused by the negligence of the Owner, K-Mart, or their agents, contractors or employees, claiming such indemnification.

6.2 Waiver of Certain Rights. Each Owner, and K-Mart so long as K-Mart is a tenant of Parcel I, hereby waives any rights it may have against another Owner (and K-Mart so long as K-Mart is a tenant of Parcel I) on account of any loss or damage occasioned to each Owner or K-Mart, as the case may be, their respective parcels (including buildings and contents of buildings thereon) or to other portions of the Shopping Center, arising from any risk generally covered by fire and extended coverage insurance, whether or not such an insurance policy is maintained or there are insurance proceeds sufficient to cover the loss. Each Owner, and K-Mart so long as K-Mart is a tenant of Parcel I, hereby waives any right of subrogation that it may have against any other Owner (and K-Mart so long as K-Mart is a tenant of Parcel I) in connection with any risk or claim generally covered by such fire and extended coverage insurance and shall procure from its insurers under all policies of fire and extended coverage insurance maintained, if any, a waiver of all rights of subrogation which the insurers might otherwise have under such policies.

6.3 General Liability Coverage and Limits. Each Owner agrees to maintain or cause to be maintained liability insurance against claims for bodily injury, death or property damage occurring on its parcel (including within the buildings thereon) and the streets and sidewalks adjacent thereto, with a bodily injury and death limit of not less than One Million

Dollars (\$1,000,000.00) for total claims for any one occurrence and not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) property damage, or , in lieu thereof, a "Combined Single Limit" (covering bodily injury, death, and property damage liability) of not less than One Million Dollars (\$1,000,000.00). In addition, each Owner agrees that during the period of construction of any building on any of the Building Areas, each Owner performing or causing such construction to be performed agrees that it will maintain or cause to be maintained, at its expense, liability insurance against claims for bodily injury, death, and property damage arising in connection with such construction, with a bodily injury limit of not less than Three Million Dollars (\$3,000,000.00) for total claims for any one occurrence and Two Hundred Fifty Thousand Dollars (\$250,000.00) property damage or, in lieu thereof, a "Combined Single Limit" (covering bodily injury liability and property damage) of not less than Three Million Dollars (\$3,000,000.00). Such insurance may be in the form of blanket liability coverage applicable to the Owner's parcel and other property owned or occupied by the Owner or the party carrying such insurance coverage. Each such policy of liability insurance shall not be subject to any deductible unless first approved in writing by all Owners. Each of the Owners shall have the right to satisfy its obligations hereunder by means of self-insurance to the extent of all or any part of the insurance required hereunder, but only so long as the Owner so self-insuring shall have a net worth according to its last published report of at least Fifty Million Dollars (\$50,000,000.00), or if such self-insurance plan is furnished

315 # 228617

through an affiliate, tenant or related company of the Owner (including a general partner of an Owner), the party furnishing such self-insurance must have a published net worth of at least Fifty Million Dollars (\$50,000,000.00). Such Owner or entity providing self-insurance shall, upon request, provide the other Owners with a description of any plan of self-insurance being used.

Each such insuring Owner, upon written request from any other Owner, shall name or cause to be named the other Owners as additional insureds under such policy or policies of liability insurance with regard to all occurrences required to be insured against by it hereunder. Such insuring Owner shall cause to be delivered to such requesting Owner a certificate of insurance showing it as an additional insured.

6.4 Performance of Indemnity Agreements. All policies of insurance required under subparagraph 6.3 shall insure the performance of the Owner insured thereunder of its indemnity agreements contained in subparagraph 6.1 and shall contain a provision that the insurance company will give all Owners twenty (20) days advance written notice of any cancellation or lapse, or the effective date of any reduction in the amounts or scope of coverage. Each Owner shall deliver to each other Owner a statement from the applicable insurer that such insurance insures the performance by the Owner insured of the indemnity agreements to limits not less than those specified in subparagraph 6.3. Each Owner shall promptly notify any other Owner of any asserted claim with respect to which such other Owner is or may be indemnified against hereunder and shall deliver to such other Owner copies of process and pleadings.

7. Signs. Each Owner (and K-Mart so long as K-Mart is a tenant of Parcel I) shall have the right to maintain such signs on the interior of any building located on its parcel as it desires, whether or not such signs are visible from the exterior of such building. As permitted by local ordinances and other applicable governmental regulations, each Owner (and K-Mart so long as K-Mart is a tenant of Parcel I) shall have the right to erect, maintain, and replace signs on the exterior walls of buildings located on its parcel, provided that in no event shall any Owner or K-Mart permit the construction and location of a sign on the roof of any building without the unanimous prior written consent of all Owners and K-Mart so long as K-Mart is a tenant of Parcel I.

The Owner of Parcel II and K-Mart shall construct one (1) free standing pylon sign at the location on Parcel I designated on the Site Plan as "Pylon Sign". Such sign shall contain two (2) designations of equal prominence and the Owner of Parcel II and K-Mart (so long as K-Mart is a tenant of Parcel I) shall each be entitled to one (1) of such designations (the designation of K-Mart appearing above the designation of the Owner of Parcel II). The Owner of Parcel II and K-Mart shall each have the right to approve the design of such sign and shall share equally in the cost of constructing and maintaining such sign. Except as is expressly provided above, no pylon, monument, or other freestanding signs (other than traffic control signs) shall be constructed within the Common Areas of the Shopping Center without the prior written approval of all Owners (and K-Mart so long as K-Mart is a tenant of Parcel I), which consent shall not be unreasonably withheld.

317 # 228617

8. Condemnation.

In the event of condemnation by any duly constituted authority for a public or quasi-public use of all or any part of the Shopping Center, that portion of the award attributable to the value of any land and improvements so taken shall be payable only to the Owner in fee, as the case may be with respect to the portion condemned, and no claim thereon shall be made by other Owners of any other portion of the Shopping Center, provided, however, all other Owners and tenants of the Shopping Center may file collateral claims with the condemning authority, over and above the value of the land and improvements so taken, to the extent of any damage suffered to their respective interests resulting from the severance of the appurtenant property or utility easements and facilities so taken; provided further, however, that the Owner in fee of the portion of the premises so condemned shall, if feasible, promptly cause the remaining portion of the Building Area and Common Area so owned by such Owner to be repaired and restored as near as practicable to its condition immediately prior to such condemnation; provided, however, that if any Owner determines that it is impractical, in its sole discretion, to rebuild any building so taken by condemnation proceedings, such building shall be promptly razed, and the Building Area site cleared, cleaned, graded, and sealed against dust at such Owner's expense, and in any event, if a portion of the Common Area has been condemned, the remaining Common Area shall be restored to a condition to permit free and safe vehicular parking and vehicular and pedestrian access and circulation (in the manner required by this Agreement) within the Shopping Center and to and from all adjacent streets.

9. Construction of Shops on Parcel III.

The Owner of Parcel III shall have the right, but not the obligation, to construct commercial buildings having a total of not more than nineteen thousand eight hundred sixty (19,860) square feet of ground floor area within the Building Area on Parcel III (the "Shops"). The Owner of Parcel III shall cause any and all commercial buildings constructed on Parcel III to be sprinklered.

In the event that thirty (30) days prior to the date the store building on Parcel II opens for business to the public, the Owner of Parcel III has not either (i) commenced construction of the Shops; or (ii) entered into a contract providing for the commencement of construction of the Shops within three (3) months from the date of such construction contract, the Owner of Parcel III agrees to seal and dust-proof the portion(s) of the Building Area on Parcel III on which the Shops have not been (and are not then being) constructed. The Owner of Parcel II agrees to provide the Owner of Parcel III with forty-five (45) days advance notice of the date the store on Parcel II will open for business to the public ("Parcel II Opening Date") and the Owner of Parcel III agrees that it will complete such sealing and dust-proofing of Parcel III on or before the Parcel II Opening Date. In the event that thirty (30) days prior to the Parcel II Opening Date the Owner of Parcel III does not have good faith plans (as evidenced by drawings, bids and other documents satisfactory to the Owner of Parcel II) to commence construction of the Shops within six (6) months after the Parcel II Opening Date, the Owner of Parcel III agrees that it will, prior to the Parcel II Opening Date,

temporarily improve (rather than dust-proof and seal) the portions of Parcel III referred to above with asphalt paving and striping.

10. Extinguishment of Temporary Service Drive.

The Owner of Parcels I and III, the Owner of Parcel II and K-Mart agree that at such time as construction of the building on Parcel II commences, that certain temporary service drive which is thirty (30) feet in width and which is located on the northern edge of a portion of Parcel II, which was granted to K-Mart pursuant to Article 10 of the K-Mart Lease, shall be automatically extinguished as of the date such construction commences without the execution of any other document. The Owner of Parcels I and III agrees that on or before the date such construction on Parcel II commences, it will cause that certain access road outlined and marked "Service Drive" on the Site Plan to be constructed so that at all times during the term of this Agreement truck access will be provided from K-Mart's rear service drive to Fir Street.

11. General Provisions.

11.1 Negation of Partnership. None of the terms or provisions hereof shall be deemed to create a partnership between or among the Owners in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers, or members of any joint enterprise.

11.2 Covenants Shall Run With the Land. All of the agreements, rights, covenants and grants of easements contained in this Agreement shall be binding upon and inure to the benefit of the Owners hereto, their respective heirs, successors (by merger, consolidation, or otherwise), assigns,

320 #228617

devises, administrators, representatives, lessees, and all other persons acquiring such land or any part thereof, whether by operation of law or in any manner whatsoever.

11.3 Termination; Amendment. This Agreement shall continue for a period of seventy-five (75) years from the date hereof and may be cancelled, changed, modified or amended in whole or in part only by written and recorded agreement executed by all of the Owners and K-Mart, so long as K-Mart is a tenant of Parcel I.

11.4 Enforcement.

(a) Should any Owner fail to timely perform any of its obligations hereunder and thereafter fail to perform such obligation within fifteen (15) days of its receipt of any other Owner's written demand therefor, the Owner giving such notice shall, in addition to any other remedy provided at law or in this Agreement, have the right (but not the obligation) to perform such obligation on behalf of the defaulting Owner, and the defaulting Owner shall reimburse the curing Owner for the cost of performing such work within ten (10) days after receipt of a billing therefor and proof of payment thereof. In the event the defaulting Owner does not reimburse the curing Owner within such ten (10) day period, the curing Owner shall have the right to exercise any and all rights which such curing Owner might have at law to collect the same.

(b) All costs and expenses of curing any default hereunder pursuant to subparagraph (a) above, and interest on such amounts at a per annum rate of interest equal to two (2) points above the prime rate

321 #218617

of interest then charged by Citibank or the maximum legal rate, whichever is less, shall be assessed against the defaulting Owner, and shall constitute a lien against the real property of such Owner until paid, which lien shall become effective and have priority from the date of recording a notice thereof in the office of the County Recorder. Any such lien shall be subordinate to any bona fide mortgage, deed of trust or lease encumbering any portion of the property of the defaulting Owner, if such mortgage, deed of trust or lease is recorded prior to the recording of such lien, and any purchaser at any foreclosure or trustee's sale (as well as any grantee by deed in lieu of foreclosure or trustee's sale) under any such prior recorded mortgage or deed of trust shall take title free from any such lien, but otherwise subject to all of the provisions of this Agreement, which run with the land.

(c) In the event of any violation or threatened violation of any provision in this Agreement by any Owner, lessee, or occupant of any portion of the Shopping Center, any or all of the Owners (and K-Mart so long as K-Mart is a tenant of Parcel I) shall have the right, in addition to the other remedies herein provided, to enjoin such violation or threatened violation. Notwithstanding the foregoing, tenants in the Shopping Center, other than K-Mart or a Skaggs Affiliate, shall not have the foregoing rights but shall rather be limited to their rights granted by law and by their respective leases.

11.5 Severability. Invalidation of any of the covenants, conditions, restrictions, or other provisions contained herein or the application thereof to any person or entity by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions, or provisions hereof, or the application thereof to any other person or entity, and the same shall remain in full force and effect.

11.6 Headings. The caption headings of the various sections and paragraphs of this Agreement are for convenience and identification only, and shall not be deemed to limit, expand, or define the contents of their respective sections or paragraphs.

11.7 Minimization of Damages. In all situations arising under this Agreement, all Owners shall attempt to avoid and minimize the damages resulting from the conduct of any other Owner.

12. Attorneys' Fees. In the event that legal proceedings are brought or commenced to enforce any of the terms of this Agreement against any Owner or other party with an interest in the Shopping Center, the successful party in such action shall then be entitled to receive and shall receive from the defaulting Owner or party a reasonable sum as attorneys' fees and costs, to be fixed by the Court in the same action.

13. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same Agreement.

323 #228617

IN WITNESS WHEREOF, the Owners hereto have executed this Agreement intending it to be effective as of the date first above written.

ANGELO GASPARE,
an individual

Angelo Gaspare

"Developer"

SKAGGS PROPERTIES, INC.,
a Delaware corporation

By Ralph E. Davis
Ralph E. Davis, President
and Chief Executive Officer

Approved as to form
Jones, Weida, Holbrook &
McDonough

[Signature]

"Skaggs"



Joseph A. Chulman
ASST Secretary

Consent

K-Mart Corporation, a Michigan corporation, hereby consents to the foregoing Agreement, accepts the rights granted to it thereunder and agrees to be bound by Article 10 therein with respect to its agreement to terminate the temporary truck access provided in such Article.

Dated this 25th day of June, 1981.

K-MART CORPORATION
a Michigan Corporation

By [Signature]
Its J. V. Johnson, Vice President

"K-Mart"

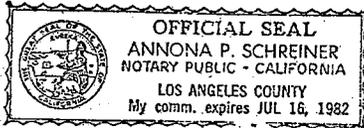
APPROVED
[Signature]

ATTEST
[Signature]
C. E. Lotzar, Jr., Asst. Secty.

STATE OF CALIFORNIA : ss.
COUNTY OF LOS ANGELES

On the 5th day of June, 1981, personally appeared before me Angelo Gaspare, the signer of the

foregoing Covenants for Operation, Maintenance and Reciprocal Easements, who duly acknowledged to me that he executed the same for the purposes and consideration therein expressed.

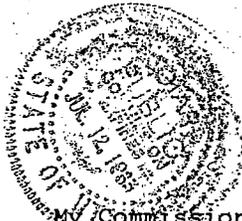


Annona P. Schreiner
Notary Public in and for
Los Angeles County, California

My Commission Expires:
July 16, 1982

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

On the 30th day of May, 1981, personally appeared before me Ralph E. Davis and Joseph R. Bowman who being by me duly sworn did say, each for himself, that he, Ralph E. Davis, is the president and that he, Joseph R. Bowman, is the Asst. secretary of Skaggs Properties, Inc., a Delaware corporation, and that the foregoing Covenants for Operation, Maintenance and Reciprocal Easements was signed in behalf of such corporation by authority of its by-laws and Ralph E. Davis and Joseph R. Bowman acknowledged to me that such corporation executed the same.



Patricia J. Pless
Notary Public, residing in
Salt Lake County, Utah

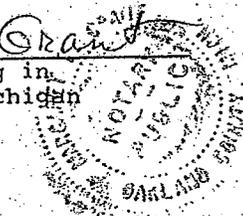
My Commission Expires:
July 12, 1983

325 #228617

STATE OF MICHIGAN)
: ss.
COUNTY OF OAKLAND)

On the 25th day of June, 1981, personally appeared before me J. P. Johnson and C. E. Lotzar, Jr., who being by me duly sworn did say, each for himself, that he, J. P. Johnson is the Vice President and that he, C. E. Lotzar, Jr. is the Assistant Secretary of K-Mart Corporation, a Michigan corporation, and that the foregoing Covenants for Operation, Maintenance and Reciprocal Easements was signed in behalf of such corporation by authority of its by-laws and J. P. Johnson and C. E. Lotzar, Jr. acknowledged to me that such corporation executed the same.

Margaret T. Grant
Notary Public, residing in
Oakland County, Michigan



My Commission Expires:
June 30, 1981

326 # 228617

4341a

EXHIBIT "A"

Attach hereto the site plan of the Shopping Center with the building area on each parcel outlined and designated "Building Area", the location of the pylon sign marked "Pylon Sign", the truck service drive outlined and designated "Service Drive", and cross-hatch the portion of Parcel III upon which schools and certain offices may not be located.

327 #228617

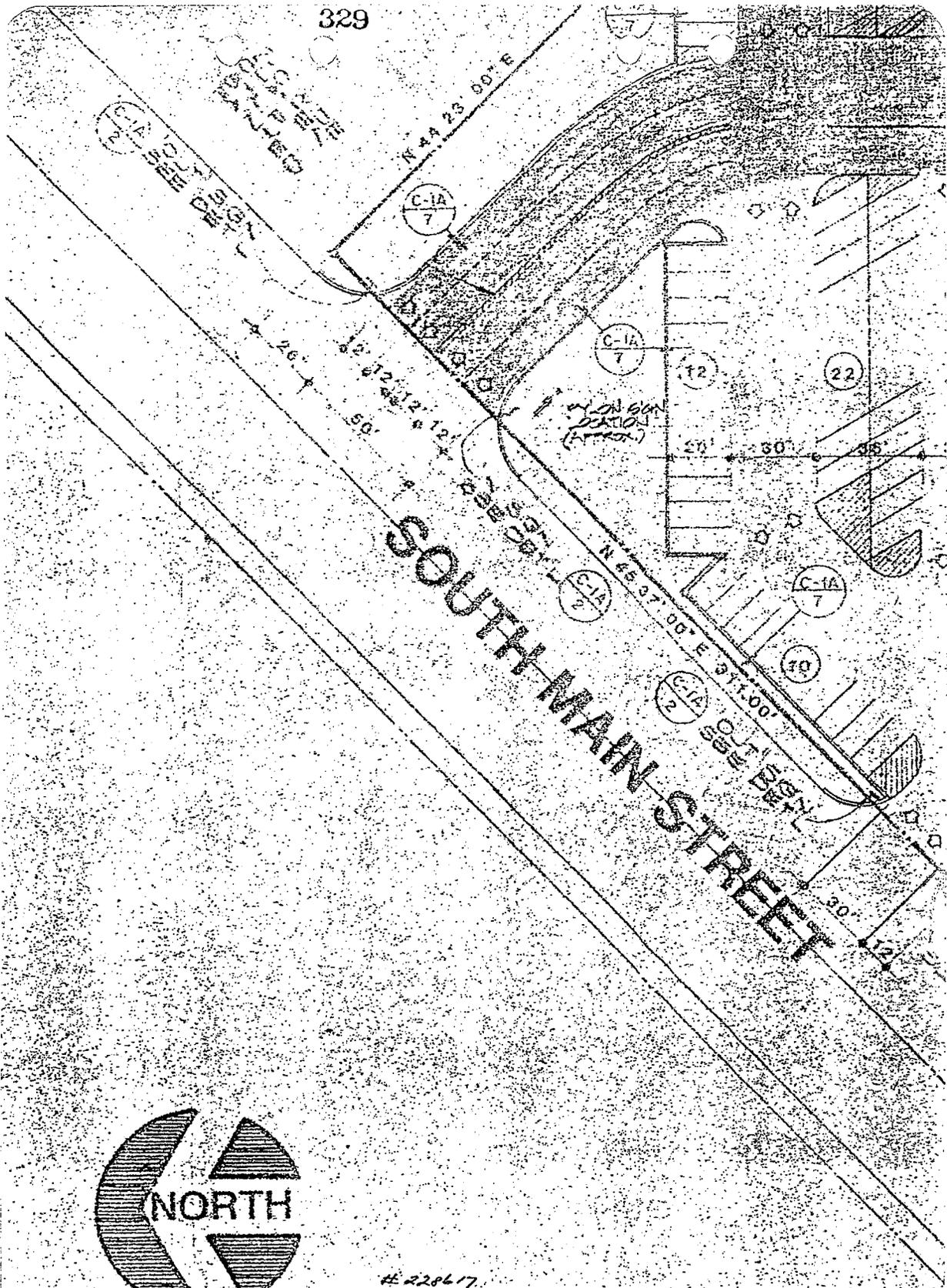
CIA
DO NOT
REPLY

229617

328



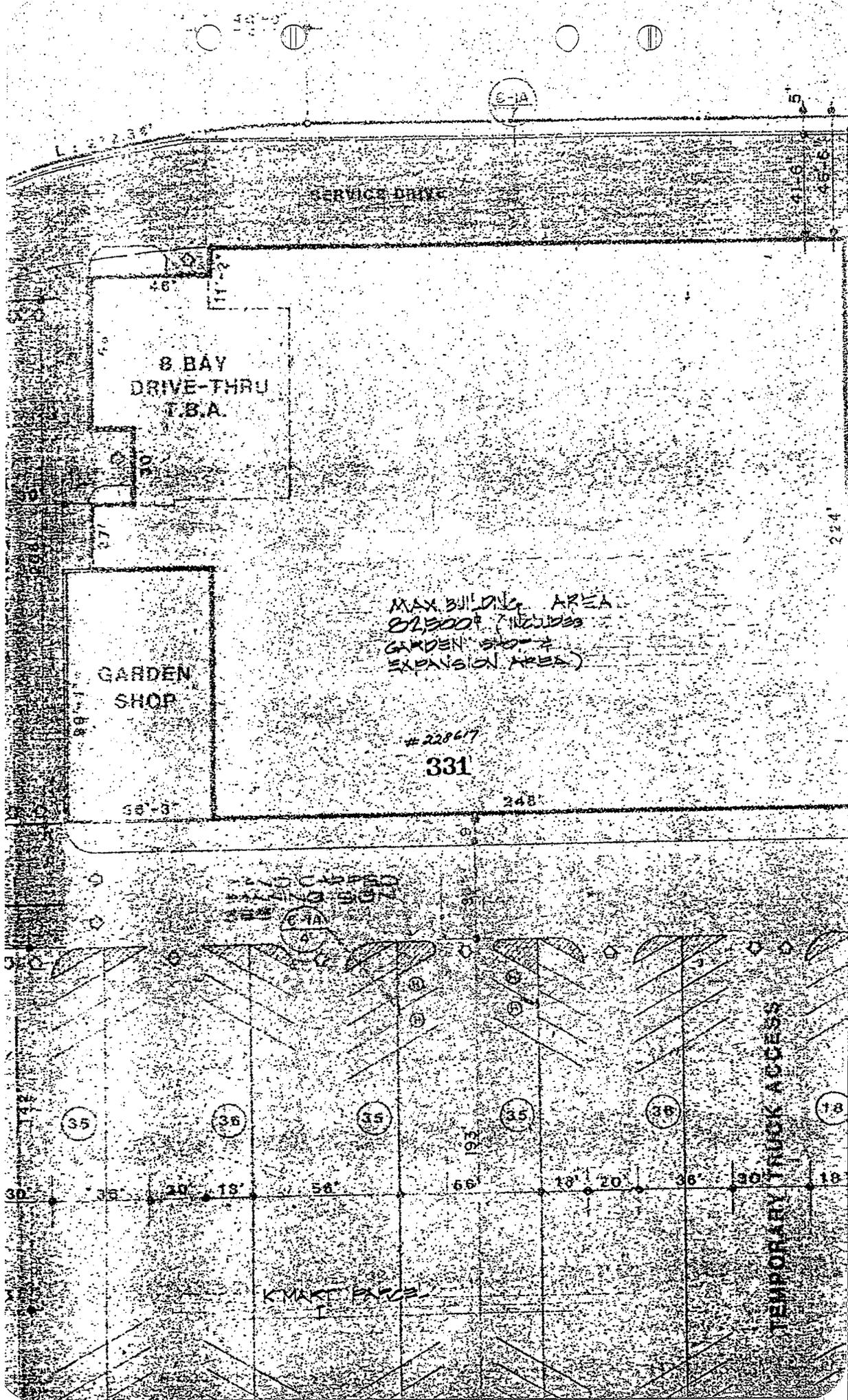
scale

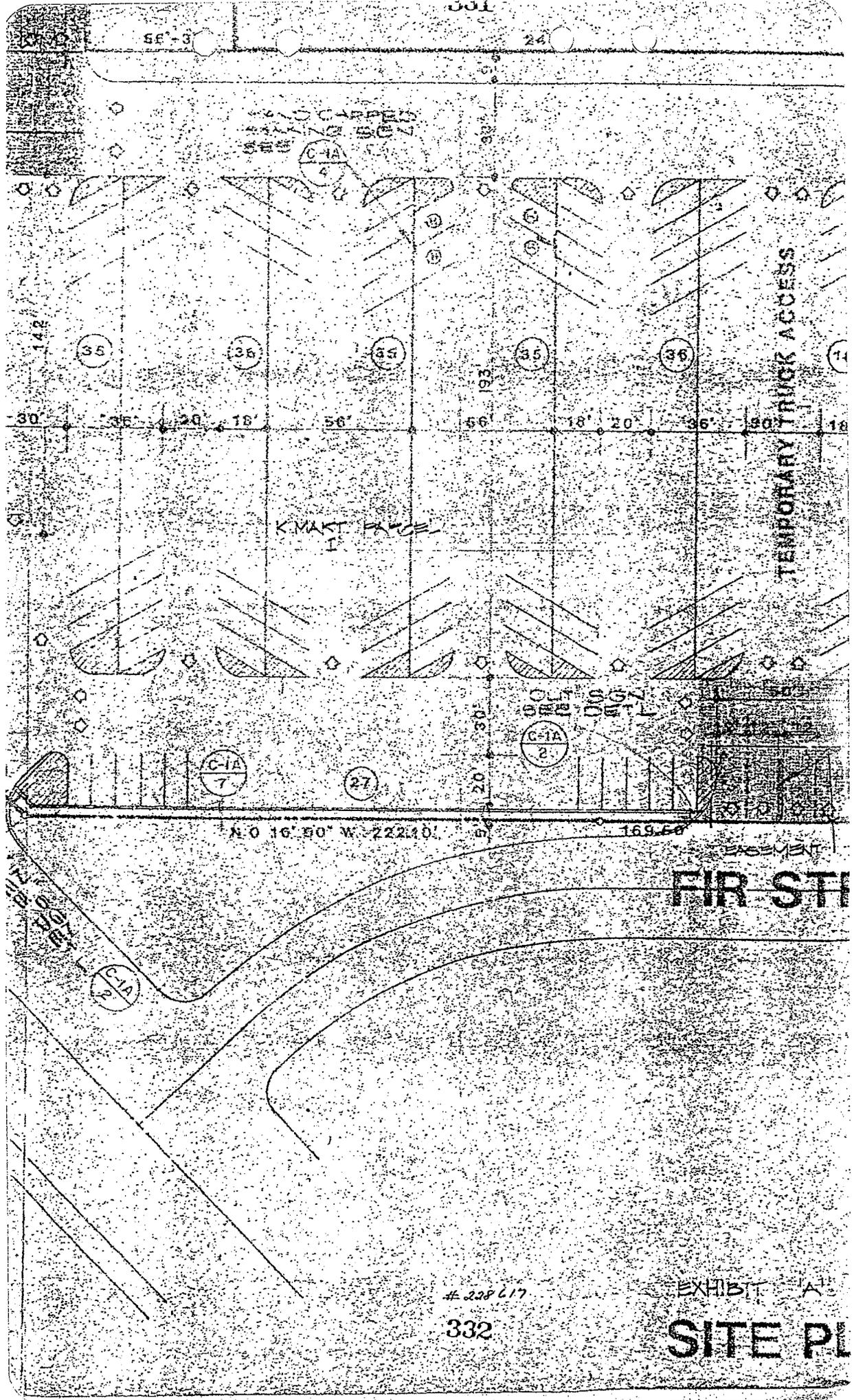


scale: 1" = 40'-0"

220617

330





238617

332

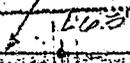
EXHIBIT A

SITE PL

SEGMENT RETAINING WALL HERE

S 0 07' 09" E 024.50'

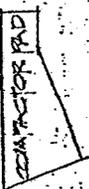
RETAINING WALL



TEMPORARY TRUCK ACCESS

MAXIMUM BUILDING AREA 50000'

226-7
333



N 89° 21' 15" E 15' 00"

N 89° 21' 15" E 15' 00"

56'

56'

56'

56'

18'

30'

10'

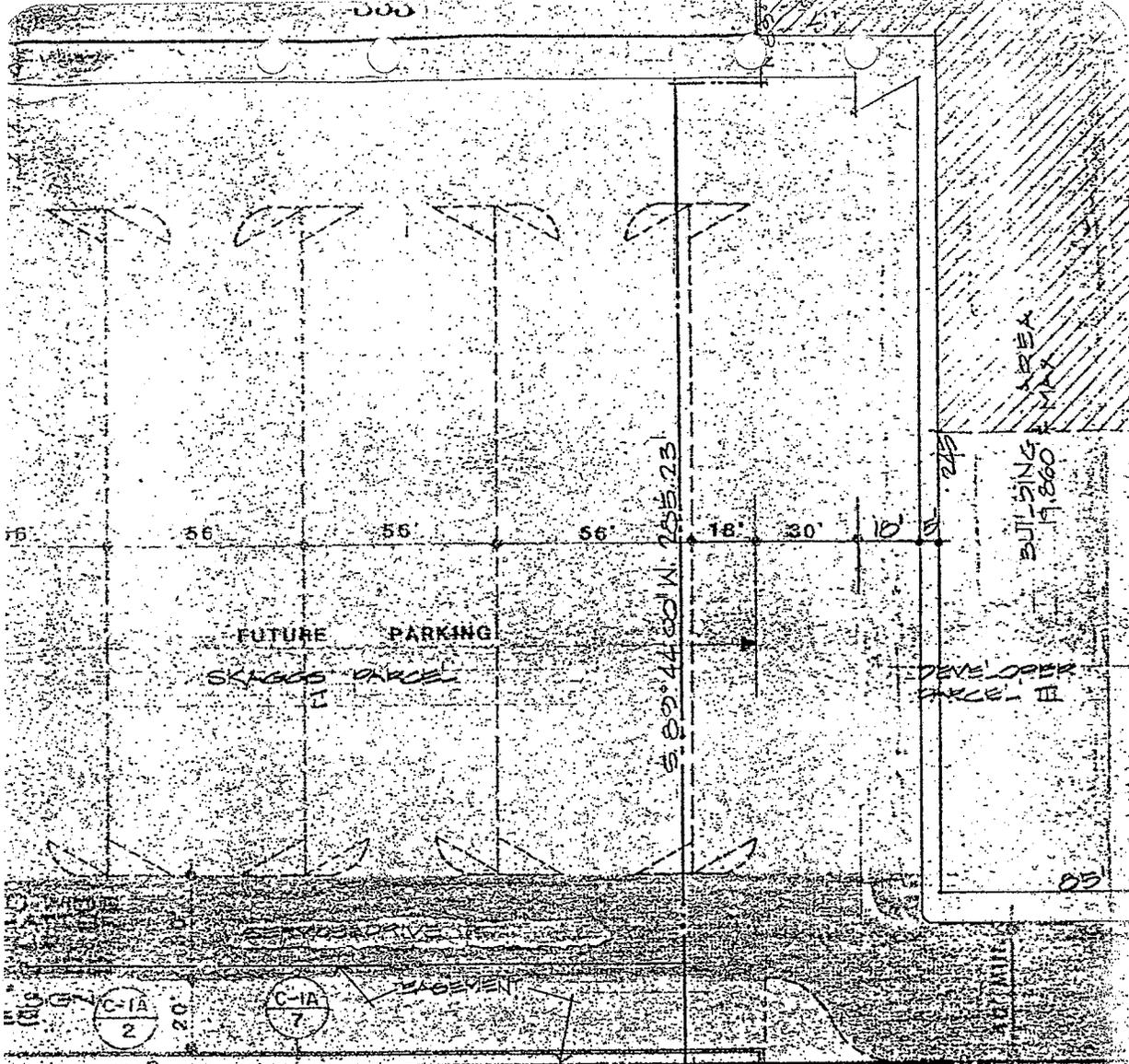
FUTURE PARKING

SKAGGS PARCEL

S 89° 44' 00" W 265.23'

BUILDING AREA

DEVELOPMENT OF SKAGGS



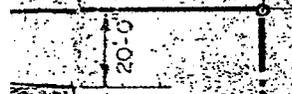
#228677

334

P
K

REVISIONS

| BY DATE | DESCRIPTION |
|-----------|--|
| 20 MAY 20 | SUPERCENTER BLDG. SIZE FUTURE BLDG. SIZE & PARCEL |
| 10 MAY 20 | SIZE OF PARCELS I & II |
| 20 MAY 20 | BLDG. SIZE & LOCATION |
| 20 MAY 20 | PARCEL 3 BLDG. DIM. & SKID DOCK |



NOTE:
SERVICE DRIVE LOCATION
TO CONFORM TO TOE OF
SLOPE THIS AREA

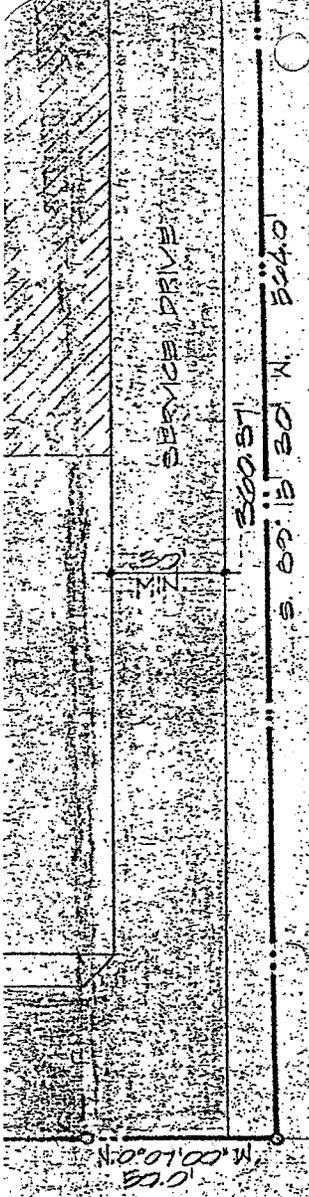
20363

#228617

335

S. BROWN AND GUNNELL, INC.
CONSULTING ENGINEERS

UTAH



K-MART NO. 9715

CEDAR CITY, UTAH

FOR

ANGELO GASPARE INC.

DEVELOPMENT CORPORATION

BOX 4008 COVINA, CALIFORNIA 91723

(213)331-2241

ROLLINS, E
CON

PROVO,

#228617

336

MARKING CAPACITY
MART - 321 CARS

Kmart 9715

50.0

K-M

ANGEL

DEVELO
BOX 400

228617

336

WORKING CAPACITY
MART - 321 CARS

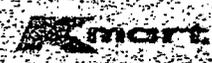
 **9715**

EXHIBIT 'A'
SITE PLAN

CEDAR CITY, UTAH
N.E. CORNER SOUTH MAIN AND FIR

228617

337

DATE JUNE 5, 1981

DRAWING NUMBER **C-1**

EXHIBIT "B"

Attach hereto a legal description of the Shopping Center and individual legal descriptions of Parcels I, II, and III.

#228617

338

EXHIBIT "B"

TOTAL TRACT DESCRIPTION

Beginning at the Southwest Corner of the Northwest Quarter of the Northwest Quarter of Section 23 T 36S, R11W, SLB&M and Running Thence North 0° 16' West 304.8 feet to a point of intersection with the dedicated Fir Street in the W.H. Leigh Subdivision; Thence North 0° 16' West 169.5 feet along the East Line of said dedicated street; Thence North 0° 16' West 222.10 feet, more or less, to the Southeasterly Right-of-Way of State Route No. 130 (Old U.S. Highway No. 91) Thence North 45° 37' East along the said Right-of-Way line a distance of 311 feet; Thence South 44° 23' East 173.10 feet; Thence Southeasterly along the arc of a 382.5 foot radius curve to the right 21.4 feet (The Chord of which bears S 42° 47' E, 21.40 feet, said curve has a Delta Angle of 3° 12' 00"); Thence North 45° 37' East 114.10 feet to the Southwesterly line of Pine Street at the corner common to lots 2 and 3, Block 4, of the original plat of Valley View Subdivision; Thence S 44° 23' E, 36.9 feet; Thence Southeasterly along the arc of a 352.5 foot radius curve to the right 272.34 feet, (the Chord of which bears S 22° 15' E, 265.61 feet, said curve has a Delta Angle of 44° 16' 00"); Thence South 0° 07' East 624.50 feet; Thence South 89° 15' 30" West 564 feet; Thence N 0° 07' 00" West 50.00 feet.
Area: 11.077 Acres

UTILITY EASEMENT TO CALIFORNIA-PACIFIC UTILITIES COMPANY

Entry No. 187980, Book 221, Page 835, October 7, 1976.

Commencing at the Southwest Corner of the Northwest Quarter of the Northwest Quarter of Section 23, T 36 S, R11W, SLB&M; Thence N 89° 15' 30" E 564.00 feet; Thence S 0° 07' 00" E 7.5 feet; Thence S 89° 15' 30" W 564.00 feet; Thence N 0° 07' 00" W 7.5 feet to the point of beginning.

PARCEL I DESCRIPTION

Commencing 371.48 feet North 0° 16' West of the Southwest Corner of the Northwest Quarter of the Northwest Quarter of Section 23, T 36 S, R11W, SLB&M; Thence North 0° 16' West 324.92 feet, more or less, to the Southeasterly Right-of-Way line of State Route No. 130 (Old U.S. Highway 91); Thence North 45° 37' East along the said Right-of-Way a distance of 311 feet; Thence South 44° 23' East 173.10 Feet; Thence Southeasterly along the arc of a 382.5 foot radius curve to the right 21.4 feet (the Chord of which bears S 42° 47' E 21.40 feet, said curve has a Delta Angle of 3° 12' 00"); Thence North 45° 37' East 114.10 feet to the Southwesterly line of Pine Street at a corner common to Lots 2 and 3, Block 4 of the original Plat of Valley View Subdivision; Thence South 44° 23' East 36.9 feet; Thence Southeasterly along the arc of a 352.5 foot radius curve to the right 272.34 feet (the Chord of which bears S 22° 15' E 265.61 feet) said curve has a Delta Angle of 44° 16' 00"); Thence South 0° 07' East 208 feet; Thence South 89° 44' West 564.73 feet to the point of beginning.
Area: 5.65 Acres

EASEMENT TO PARCEL II AND III

Commencing 371.48 feet N 0° 16' West of the Southwest Corner of

EXHIBIT "B" CON'T.

of the Northwest Quarter of the Northwest Quarter of Section 23, T 36 S, R11W, SLB&M; Thence N0°16'W 60.00 feet; Thence N89°44'00" E 30.00 feet; Thence S 0°16'W 60.00 feet; Thence S 89°44'00" E 30.00 feet to the point of beginning, for purposes of non-exclusive ingress and egress of vehicular and pedestrian traffic.

PARCEL II DESCRIPTION

Commencing 150.00 feet N0°16' West of the Southwest Corner of the Northwest Quarter of the Northwest Quarter of Section 23, T 36 S, R11W, SLB&M; Thence N0° 16'00"W 221.48 feet; Thence N 89°44'00" E 564.73 feet; Thence S 0°07'00"E 416.50 feet; Thence S 89°15'30"W 203.63 feet; Thence N 0°16'00"W 170.50 feet; Thence S 89°44'00" W 75.00 feet; Thence N 0°16'00" W 26.52 feet; Thence S 89°44'00" W 285.23 feet to the point of beginning. Area: 3.831 Acres

EASEMENT TO PARCEL III

Commencing 150.00 feet N 0°16'W of the Southwest Corner of the Northwest Quarter of the Northwest Quarter of Section 23, T 36 S, R11W, SLB&M; Thence N 0°16'W 221.48 feet; Thence N 89°44'E 30:00 feet; Thence S 0°16'E 221.48 feet; Thence S 89°44'W 30.00 feet to the beginning, for purposes of non-exclusive ingress and egress of vehicular and pedestrian traffic.

UTILITY EASEMENT TO CALIFORNIA-PACIFIC UTILITIES COMPANY

Entry No. 187980, Book 221, Page 835, October 7, 1976.

Commencing N 89°15'30"E 360.23 feet from the Southwest Corner of the Northwest Quarter of the Northwest Quarter of Section 23, T 36 S, R11W, SLB&M; Thence N 89° 15'30"E 203.50 feet; Thence S 0°07'E 7.5 feet; Thence S 89°15'30"W 203.52 feet; Thence N 0°07'W 7.5 feet to the beginning.

PARCEL III DESCRIPTION

Commencing at the Southwest Corner of the Northwest Quarter of the Northwest Quarter of Section 23, T 36 S, R11W, SLB&M; Thence North 0°16'00"West 150.00 feet; Thence North 89°44'00"East 285.23 feet; Thence South 0°16'00" East 26.52 feet; Thence North 89°44'00" East 75.00 feet; Thence South 0°16'00" East 170.50 feet; Thence South 89° 15'30" West 360.37 feet; Thence North 0°07'00" West 50.00 feet to the point of beginning. Area: 1.596 Acres

UTILITY EASEMENT TO CALIFORNIA-PACIFIC UTILITIES COMPANY

Entry No. 187980, Book 221, Page 835, October 7, 1976.

Commencing at the Southwest Corner of the Northwest Quarter of the Northwest Quarter of Section 23, T 36 S, R11W, SLB&M; Thence N 89°15'30" E 360.50 feet; Thence S 0° 16'00" E 7.50 feet; Thence S 89°15'30" West 360.48 feet; Thence N 0° 07'00" West 7.50 feet to the point of beginning.

340 # 228617