

SECOND AMENDMENT TO
CONSTRUCTION, OPERATION AND
RECIPROCAL EASEMENT AGREEMENT
OF

UNIVERSITY MALL SHOPPING CENTER
OREM, UTAH

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Exhibit A - Legal Descriptions:

Part I - Developer Tract

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Exhibit B - Plans:

Exhibit B-1 - Site plan (sometimes referred to as "Plot Plan")

Exhibit B-2 - Parcel Plan Description Map

Exhibit B-3 - Utility Easement (As-Built) Plan

Consents and Subordinations:

ZCMI Mortgagee (Equitable Life Assurance Society)

Pennorem Associates

Pennorem Mortgagee (CIGNA)

Developer Phase 1 Mortgagee (CIGNA)

Developer Phase 2 Mortgagee (Standard FS&L)

Mervyn's Tract Fee Owner (University Mall Shopping Center)

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UNIVERSITY MALL SHOPPING CENTER
OREM, UTAH ENT 3710 BK 2881 PG 817

THIS SECOND AMENDMENT TO CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT OF UNIVERSITY MALL SHOPPING CENTER is made and entered into to be effective as of July 31, 1981, by and between UNIVERSITY MALL, INC., a Utah corporation, and UNIVERSITY MALL SHOPPING CENTER, a Utah partnership, with offices at 2677 East Parley's Way, Salt Lake City, Utah 84109, hereinafter "UNIVERSITY MALL, INC." and "University Mall Shopping Center" are collectively referred to as "Developer", ZIONS COOPERATIVE MERCHANTILE INSTITUTION, a Utah corporation, with offices at 2200 South 900 West, Salt Lake City, Utah 84119, hereinafter referred to as "ZCMI", J.C. PENNEY COMPANY, INC., a Delaware corporation, with offices at 1901 North Roselle Road, Schaumburg, Illinois 60195, hereinafter referred to as "Penney", and MERVYN'S, a California corporation with offices at 25001 Industrial Boulevard, Hayward, California 94545, hereinafter referred to as "Mervyns".

WITNESSETH:

WHEREAS, University mall, Inc., ZCMI and ^{J.C. Penney Properties, Inc.} ~~Penney~~ did enter into a certain Construction, Operation and Reciprocal Easement Agreement (hereinafter referred to as "ORIGINAL REA"), dated as of the 2nd day of October, 1971, which said ORIGINAL REA was recorded in the Recorder's Office at Utah County on November 3, 1971, in Book 1244, beginning at Page 410, as Instrument No. 14867; and also a "FIRST AMENDMENT", dated as of the 31st day of January 1973 and recorded in such Utah County Recorder's Office on April 10, 1973, in Book 1322, beginning at Page 666 as Entry No. 5962 (the ORIGINAL REA and FIRST AMENDMENT are hereinafter collectively referred to as "EXISTING REA"); and

WHEREAS, on April 16, 1973, J.C. Penney Properties, Inc., by an Assignment of Lease, assigned to J.C. Penney Company, Inc. all of its rights, licenses, easements and privileges under the EXISTING REA; and

WHEREAS, Mervyn's and University Mall Shopping Center desire henceforth to become parties to the EXISTING REA;

WHEREAS, University Mall, Inc., ZCMI and Penney are agreeable to permitting Mervyn's and University Mall Shopping Center to become parties to the EXISTING REA, and to modifying certain other provisions of the EXISTING REA as reasonably required in relation to the Phase 2 expansion which has occurred, as contemplated in the EXISTING REA; and

WHEREAS, it is the mutual desire of the parties to execute a further amendment to the EXISTING REA, which amendment will hereinafter be referred to as "SECOND AMENDMENT", (the EXISTING REA as amended by this SECOND AMENDMENT is hereinafter referred to as "REA"); and

WHEREAS, Developer is the owner of certain tracts of land located in the City of Orem, County of Utah, State of Utah, which are described in Part I (Developer Tract) and Part IV (Phase 2 Tract) and Part V ("SC-1 Annex") on Exhibit A, and are shown on Exhibit B of the EXISTING REA as "Developer Tract", "Future Phase 2", and "Future SC-1", respectively; and Developer is the owner of certain additional tracts of land designated on Exhibit B of the EXISTING REA as "Future SC-3", "Future SC-4" and Parcel "D"; and all of the aforementioned Tracts owned by Developer and not designated as Developer Tract in said Part I of Exhibit A of EXISTING REA are hereafter collectively designated as "Other Tracts"; and

WHEREAS, University Mall Shopping Center, is now and since the beginning of this shopping center development has been at all times the true beneficial owner of Developer Tract and the Other Tracts referred to in the preceding WHEREAS paragraph, notwithstanding that legal title was previously vested in University Mall, Inc., as a mere title-holding trustee for University Mall Shopping Center; and

WHEREAS, record legal title as well as equitable title to Developer Tracts and such Other Tracts is now vested directly in University Mall Shopping Center, as Developer; and

WHEREAS, Developer now desires to add to the Shopping Center Site and to Developer Tract portions of such Other Tracts of

Developer's land designated above as "Future SC-1" (1.576 acres), Parcel "D" (0.659 acres), and portions (aggregating 14.30 acres) of Future Phase 2 and Future SC-3 and Future SC-4, and a "right of way easement" for egress and ingress from the Shopping Center to 800 South Street; and

WHEREAS, portions of the Shopping Center have been subdivided in compliance with the applicable laws and ordinances of Orem City because of the various ownership entities which are involved; and

WHEREAS, all of the portions of such Other Tracts of Developer land to be included in the Shopping Center Site together with the parcels in Developer Tract in the EXISTING REA are described collectively as "Developer Tract" in Part I of Exhibit A to this SECOND AMENDMENT; and such Developer Tract is shown on Exhibits B-1 and B-2 to this SECOND AMENDMENT; and

WHEREAS, ZCMI is the owner of a certain tract of land (containing 15.796 acres) located in the City of Orem, County of Utah, State of Utah, which is described in Part III of Exhibit A of the EXISTING REA and is shown on Exhibits B-1 and B-2 to this SECOND AMENDMENT, said tract of land hereinafter referred to as the "ZCMI Tract"; and

WHEREAS, Penney is the owner of a certain tract of land (containing 13.207 acres) located in the City of Orem, County of Utah, State of Utah, being substantially described in Part II of Exhibit A to this SECOND AMENDMENT, and being shown on Exhibits B-1 and B-2 to this SECOND AMENDMENT, said amended tract of land hereinafter referred to as the "Penney Tract"; and

WHEREAS, Developer is a "Ground Lessor" and Mervyn's is a "Ground Lessee" of that Developer Parcel redesignated and shown as Mervyn's Tract (containing 6.331 acres) on Exhibit B-2 hereto and described in Part IV of Exhibit A, and hereinafter referred to as "Mervyn's Tract"; and

WHEREAS, it is mutually agreed that Mervyn's should become a Party to the REA by virtue of its executing this SECOND AMENDMENT; and

WHEREAS, ZCMI deems it appropriate that Equitable Life Assurance Society hereinafter designated as "ZCMI Mortgagee" execute its consent to this SECOND AMENDMENT for the sole purpose of indicating its consent thereto, and not to become a Party to this REA; and

WHEREAS, Penney deems it appropriate to have certain other entities involved with Penney Tract execute their respective consents to this SECOND AMENDMENT for the sole purpose of indicating their respective consents thereto, and not to become "Parties" to the REA; such consenting entities are (1) Pennorem Associates, a New York limited partnership, (hereinafter referred to as "Pennorem"), and (2) Connecticut General Life Insurance Company ("Pennorem Mortgagee"); and

WHEREAS, Developer deems it appropriate that Connecticut General Life Insurance Company, hereinafter referred to as "Developer Phase 1 Mortgagee", execute its consent to this SECOND AMENDMENT for the sole purpose of indicating its consent thereto, and not to become a "Party" to the REA; and

WHEREAS, Developer deems it appropriate that Standard Federal Savings and Loan, hereinafter referred to as "Developer Phase 2 Mortgagee", execute its consent to this SECOND AMENDMENT for the sole purpose of indicating its consent thereto, and not to become a "Party" to the REA; and

WHEREAS, the Parties hereto desire to establish a general plan for the protection, development, maintenance, improvement and Operation of the expanded Shopping Center Site and to provide for an integrated use of the various Tracts of land possessed by each within the Shopping Center Site and to develop, improve and operate the premises designated as the ZCMI Tract (15.796 acres) the Penney Tract (13.207 acres), the Developer Tract Parcels 1, 2, 3, 5, 6, 8, SC-1 and D (aggregating 39.196 acres exclusive of



Parcel 6 right of way easement), and the Mervyn's Tract (6.331 acres) (referred to in the EXISTING REA as "Developer Parcel 7 Tract"), each of which Tracts is described in Exhibit A attached to this SECOND AMENDMENT. The aggregate area within the Shopping Center Site is 74.530 acres (exclusive of Parcel 6 right of way easement), and the Developer, ZCMI, Penney and Mervyn's Tracts are collectively herein defined and referred to as "Shopping Center Site," a description of which is set forth in Part V of Exhibit A attached to this SECOND AMENDMENT. The University Mall Shopping Center has been developed on the Shopping Center Site and shall also be known from time to time as the "Center" or "Shopping Center"; which terms for purposes of the REA shall be synonymous; and

WHEREAS, Penney has caused to be constructed and is causing to be Operated, as a part of the Center a retail facility, as the same shall exist from time to time, in one or more buildings or installations, now or hereafter existing, hereinafter collectively called "Penney Store", together with other improvements, all hereinafter called "Penney Improvements", located on a portion or portions of the Penney Tract, sometimes hereinafter collectively called the "Penney Store Site", and which Penney Store Site is shown on Exhibit B-1 to this SECOND AMENDMENT, and which Penney Tract is shown on Exhibit B-2 to this SECOND AMENDMENT; and

WHEREAS, ZCMI has caused to be constructed and is causing to be Operated, as a part of the Center, a retail facility, as the same shall exist from time to time, in one or more buildings or installations now or hereafter existing, hereinafter collectively called "ZCMI Store", together with all improvements, all hereinafter called "ZCMI Improvements", located on a portion or portions of the ZCMI Tract, sometimes hereinafter collectively called the "ZCMI Store Site", which ZCMI Store Site is shown on Exhibit B-1 to this SECOND AMENDMENT and which ZCMI Tract is shown on Exhibit B-2 to this SECOND AMENDMENT; and

(Handwritten initials)

WHEREAS, Mervyn's has caused to be constructed and is causing to be Operated as a part of the Center, a retail facility, as the same shall exist from time to time, in a building or installation, hereinafter collectively called "Mervyn's Store", together with other improvements, all hereinafter called "Mervyn's Improvements", located on a portion or portions of the Mervyn's Tract, sometimes hereinafter collectively called the "Mervyn's Store Site", which Mervyn's Store Site is shown on Exhibit B-1 to this SECOND AMENDMENT and which Mervyn's Tract is shown on Exhibit B-2 to this SECOND AMENDMENT; and

WHEREAS, Developer has caused to be constructed and is causing to be Operated, as a part of the Center, one or more buildings or installations, as the same shall exist from time to time, for retail occupancy and other occupancy as hereinafter provided, in both Phase 1 Developer Stores and Phase 2 Developer Stores upon portions of Developer Tract, and consisting of "Developer Mall Stores" and "Developer Non-Mall Stores" at locations shown on Exhibit B-1 to this SECOND AMENDMENT; and

WHEREAS, in addition thereto, Developer has caused to be constructed and is Operating an Enclosed Mall and other Common Areas, such buildings and improvements together with Developer Mall Stores and Developer Non-Mall Stores being hereinafter collectively called "Developer Improvements", and located on portions of the Developer Tract as shown on Exhibit B-1 to this SECOND AMENDMENT; and

WHEREAS, the REA also provides for the construction, maintenance and operation of the exterior Common Areas which exterior Common Areas have heretofore been constructed; and

WHEREAS, Developer, ZCMI, Penney and Mervyn's each desire to grant to the other Parties to the REA certain easements in, to, over and across their respective Tracts; and

WHEREAS, an "as built" Survey Map showing locations of easements for utilities in relation to building locations is attached to this SECOND AMENDMENT as Exhibit B-3 and is hereinafter referred to as "Utility Plan"; and

WHEREAS, the Parties to this SECOND AMENDMENT desire to include Mervyn's and Developer as parties to said REA, and to make certain mutual provisions for the construction, maintenance and operation of the Common Areas and other buildings and improvements upon the Shopping Center Site and to make various other covenants and agreements as hereinafter more specifically set forth.

NOW THEREFORE, in consideration of the sum of One Dollar (\$1.00) paid by each Party to the other, receipt whereof is hereby acknowledged, and the mutual agreements herein set forth, the Parties hereto agree retroactive to effective date of this SECOND AMENDMENT to amend the EXISTING REA as follows:

1. Except as otherwise hereinafter provided, all terms used herein and used in the EXISTING REA shall have the respective meanings provided in the EXISTING REA.

2. Section I of the EXISTING REA captioned "DEFINITIONS" is amended as follows:

a. In Section I C, the definition of Common Area, add to the second paragraph as additional Common Areas the following: "Mall pylon, signs and directories, perimeter walls and fences, Mall equipment storage areas and perimeter landscaping areas outside Developer Stores, the Enclosed Mall, the ZCMI Store, the Penney Store, and the Mervyn's Store.", and add the following new paragraph at the end of said Section I C:

"The term "Phase 2 Common Area" refers to Common Areas added to the Center at the time of Phase 2 expansion and the term includes "Phase 2 Enclosed Mall" and "Phase 2 exterior Common Area" improvements which are not within any building structure."

b. In Section I D lines 5 and 6 to the definition of Common Building Component, after the word "owned" insert "or the leasehold interest which is leased by a Party."

c. In Section I E line 2, to the definition of Developer Improvements, after the words "all Malls" insert "Enclosed Mall, Mall Management office, Mall storage areas,".

d. In Section I F add the following: "The term "Phase 2 Developer Mall Stores" refers to stores and buildings located by Developer from time to time abutting the Phase 2 Enclosed Mall."

e. In Section I G add the following: "The term "Phase 2 Developer Non-Mall Stores" refers to stores and buildings located from time to time on Developer Tract which stores do not abut the Enclosed Mall and which stores were created as part of Phase 2 expansion."

f. In Section I-I add the following: "The term "Phase 2 Enclosed Mall" refers to the portion of the Enclosed Mall created as part of Phase 2 expansion."

g. In Section I L line 1 to the definition of Occupant add "Mervyn's" after Penney,".

h. In Section I P line 1 to the definition of Party add ", Mervyn's" after the word "ZCMI".

i. In Section I S delete the words "on the tract of land described in Part VI of Exhibit A hereto" and add "as shown and so designated on Exhibit B-1".

j. Section I T is deleted and the following is inserted: "T. The term "Phase 2" refers to the buildings and other improvements added to the Center in conjunction with or at the time of the Center expansion northward to add the Mervyn's Store and other improvements located as shown and so designated on Exhibit B-1."

k. In Section I U line 5 after "Penney" add ", Mervyn's".

l. In Section I V line 2 after "the ZCMI Store" add the words "and/or the Mervyn's Store".

m. In Section I Y line 2 insert ", the Mervyn's Tract" after the words "the ZCMI Tract".

n. A new Section I Z is added as follows:

"Z. The term "Mervyn's Court" refers to that portion of the Enclosed Mall designated as such on Exhibit B-1."

3. Section II of the EXISTING REA captioned "EASEMENTS" is amended as follows to include Mervyn's as a Grantor or Grantee of certain of the easements granted therein:

a. In Section II A on page 14 in line 3 after "Penney" insert ", Mervyn's"; and after "Penney Tract" in line 8 insert ", the Mervyn's Tract".

b. In Section II B and II C on pages 15 and 16 in line 4 add ", Mervyn's" after the word "Developer" as one of the grantees.

c. In Section II on page 17 insert the following paragraph as paragraph "CC" before paragraph D:

"CC. Mervyn's with respect to the Mervyn's Tract does hereby reserve the right to grant easements in the Common Area of the Mervyn's Tract to Occupants and Permittees and does hereby grant to Developer, Penney and ZCMI for their respective uses, and the use of their respective grantees and Permittees, in common with all other entitled to use the same, non-exclusive easements in, to and over the Common Area of the Mervyn's Tract, for ingress to and egress from the Mervyn's Tract for the passage and parking of vehicles, and the passage and accommodation of pedestrians on such respective portions of the Common Area of the Mervyn's Tract as are set aside, maintained and authorized for such use pursuant to this REA, and for doing such other things as are authorized or required to be done on such Common Area. Mervyn's reserves the right to eject or cause the ejection from the Common Area of the Mervyn's Tract of any Person or Persons not authorized, empowered or privileged by Mervyn's to use the same. Notwithstanding the foregoing, Mervyn's reserves the right to close off the Common Area of its Tract for such reasonable period or periods of time as may legally be necessary to prevent the acquisition of prescriptive rights by anyone. Notwithstanding the reservation herein provided for, and the right to grant easements, it is expressly understood and agreed that such reservation and the right to grant easements is limited to non-

exclusive use of the surface for the foregoing purposes, and exclusive or non-exclusive uses under the surface for passage of utilities. No Floor Area shall be erected and constructed within any part of the Common Area of the Mervyn's Tract, except as shown on Exhibit B-1. Any easement granted pursuant to the provisions of this Section II CC may be abandoned and terminated by execution of an agreement so abandoning or terminating the same by the Party or Parties who own the dominant estates. Any relocation of any easement shall be made at the expense of the Parties requesting such relocation."

d. In Section II D on page 17 line 1 insert "Mervyn's" after "Penney" as one of the grantees. In paragraph II D 1, line 9 after "Penney Tract," insert "and in the case of Mervyn's, buildings or improvements on the Mervyn's Tract,". In Section II D 2 on page 18 in line 8 insert "Mervyn's Store" after the words "Penney Store", and in the last paragraph of Section II D in line 1 insert "Mervyn's" after "Penney".

e. In Section II E 1 on page 18 in line 1 insert "Mervyn's" after the word "Developer", and at the end of the first paragraph after "ZCMI Store" insert "and in the case of Mervyn's, the Mervyn's Store." In the last paragraph of Section II E on page 19 line 1, insert the word "Mervyn's" after the word "Developer".

f. In Section II F 1 on page 20 in line 1 insert the word "Mervyn's" after the word "Developer", and in line 11 after the word "Penney Store" insert "and in the case of Mervyn's, the Mervyn's Store," and in the last paragraph of Section II F on page 21 line 1, insert "Mervyn's" after the word "Developer".

g. Insert a new Section II FF after Section II F on page 21 as follows:

"FF. Mervyn's with respect to the Mervyn's Tract hereby grants:

1. To Developer, ZCMI and Penney non-exclusive easements in, to, over, under and across

the Common Area of the Mervyn's Tract for the purpose of the installation, operation, flow and passage, use, maintenance, repair, relocation and removal of sewers (including underground storm sewers), water and gas mains, electrical power lines, telephone lines and other utility lines, all of such sewers, mains and lines to be underground, serving in the case of Developer, the Developer Improvements, and in the case of Penney, the Penney Store, and in the case of ZCMI, the ZCMI Store.

The location of all easements of the character described in this Section II FF 1 shall be subject to the approval of Mervyn's. Developer hereby consents to such grants of easements by Mervyn's.

2. To Developer exclusive easements for the purpose of the construction, reconstruction, erection, removal and maintenance on, to, over, under and across the Mervyn's Tract of Common Building Components, and to a distance of 14 feet, of footings, supports, canopies, flagpoles, roof and building overhangs, awnings, alarm bells, signs, lights and lighting devices and other similar appurtenances to the Developer Improvements, as are shown in the working drawings for such Improvements, approved by Mervyn's pursuant to the provisions of Section IV of this REA, or pursuant to any other written agreement hereafter executed between Mervyn's and any grantee of the easement referred to in this paragraph 2.

Developer ZCMI and Penney, respectively, covenant and agree that their exercise of such easements shall not result in damage or injury to

the buildings or other improvements of Mervyn's and shall not interfere with the business operation conducted by Mervyn's in the Center. The exercise of the easement rights referred to in this Section II FF shall be in conformity with the provision of Section III of this REA. Any improvements within any such exclusive easement shall be deemed a part of improvements of the Party granted such easement."

h. In Section II insert after paragraph H on page 21 a new paragraph HH as follows:

"HH. Mervyn's with respect to the Mervyn's Tract hereby grants to Developer non-exclusive easements in, to, over, under and across the Common Area of Mervyn's Tract for the purpose of the development and construction thereof pursuant to the provisions of Section VI of this REA. The exercise of the rights referred to in this Section II HH shall be in conformity with Section III of this REA."

i. In Section II J on page 22 in line 8 after the word "improvements" insert "or the Mervyn's improvements," and in line 12 delete the words "owner of the tract" and insert "Party whose Tract or Building is", and in line 2 of the second paragraph of Section II J on page 22 after the words "ZCMI Tract" insert ", and Mervyn's and the Mervyn's Tract".

j. In Section II L on page 23 line 2 after "Section II E 1" insert ", Section II FF 1", and at the end (line 6) after the word "Sections" insert ", Developer, Penney and ZCMI have joined in the execution of such an agreement as to utility facilities constructed in connection with Phase I."

k. Insert a new Section II O after Section II N on page 23 as follows:

"O. Developer with respect to Parcel 6 of the Developer Tract hereby grants to ZCMI, Penney, and Mervyn's for their respective uses, and the use of their respect grantees and

Permittees, non-exclusive easements in, to, over and across Parcel 6 of the Developer Tract for the purpose of ingress and egress from the Shopping Center to 800 South Street for the passage of vehicles."

4. Section III captioned "EXERCISE OF EASEMENTS" is amended to include Mervyn's as a grantee and grantor of easements by making the following changes: Insert "II FF" after "II F" on pages 23 and 24 in line 2 of Sections III A 1, and III A 2, and on page 24 in line 2 of Sections III A 3 and III A 4; and in Section III A 5 on page 25 at the end of line 1 insert "and II HH".

5. Section IV captioned "PLANS" is amended as follows to provide for the Phase 2 expansion including the construction of the Mervyn's Store building and facility:

a. In Section IV A, on page 25, line 18, insert after the words "improvement plans." the following sentence: "ZCMI, Penney, Mervyn's and Developer have previously constructed their buildings after approval of their construction plans by the Project Architect and Developer. Accordingly these Parties have met the requirement of submission of their respective plans to the Project Architect and Developer."

b. In Section IV A 2 (c) on page 27, in line 1 after the words "plans for" insert the words "Phase 1 having been previously provided and construction completed and Phase 2 plans having been provided and construction completed such that plans are complete for" the entire shopping center. . .

c. In Section IV A 2 (e) on page 27 add after the word "planting" in line 3 ", which has been provided and the landscaping completed in accordance with approved plans."

d. In Section IV A 2 (i) on page 28 add a new sentence at the end as follows: "Such drawings have been provided as to the Phase 1 storm drains and as to the additions and changes required by the Phase 2 addition."

e. In Section IV A 2 (j) on page 28 add to the end: "The Mervyn's Store building and the curbing between the side-

walk and the parking areas was constructed by Landlord as part of Landlord's Phase 2 improvements to the exterior Common Area."

f. In Section IV B on page 30 in line 6, after the word "Developer" insert the word ", Mervyn's".

g. In Section IV C on page 30 add a new sentence at the end as follows: "Phase 1 and Phase 2 construction of the Phase 1 and 2 Enclosed Mall structure has been completed and all Common Areas reconstructed in accordance with plans approved by all parties and as required by Orem City."

h. In Section IV D on page 31 in line 3 insert after the word "Developer" the word "Mervyn's," and after the last words of the paragraph "Penney Stores" insert ", and Mervyn's hereby waives its right to approve the Penney Store and ZCMI Store; and Penney and ZCMI hereby waive their rights to approve the Mervyn's Store."

i. In Section IV E, on page 31, insert in line 2 the word ", Mervyn's" after the word "Penney."

6. Section V captioned "CONSTRUCTION OF DEVELOPER IMPROVEMENTS BY DEVELOPER" is hereby amended as follows:

a. In Section V A, on page 33, add at the end the following: "Developer has previously completed construction of Phase 1 including the Mall Stores and Enclosed Mall in accordance with the REA. Developer and Mervyn's have caused to be completed Developer's Phase 2 improvements to the Developer Mall Stores, Enclosed Mall, and other Common Areas, and the Mervyn's Store, and such Developer construction and Mervyn's construction was completed (except for tenant's finish work in unoccupied Developer Mall Stores on or before July 17, 1981, on which date more than 50% of Phase 2 Developer Mall Store Floor Area opened for business."

b. In Section V C on page 33 in lines 14 and 18, after the word "ZCMI" add the words "or Mervyn's", and in line 21 after the words "ZCMI Store" add "and Mervyn's Store". In the first paragraph on page 34 in line 3, after each instance of the word

"ZCMI" add the words "and Mervyn's"; and insert at the end of said paragraph ", and those directly relating to the Mervyn's requirements shall be borne by Mervyn's."

c. In Section IV D 1 on page 34 in line 1, delete the words "shall be" and insert "have been."

d. Section IV D 2 on pages 34 and 34(a) is deleted and new sections IV D 2, 3, 4 and 5 should be added as follows:

"2. Mervyn's has constructed a Store building with 90,826 square feet of Floor Area for use as a department store and Developer has constructed Phase 2 Developer Mall Store buildings, H, I, J, and L containing an aggregate of 95,120 square feet of Floor Area (plus 654 square feet of kiosks and 2,478 square feet of basement storage units) as shown on Exhibit B-1 and the Phase 2 Enclosed Mall plus Enclosed Mall Common Area and a basement storage area for Enclosed Mall storage requirements for maintenance, seasonal decorations, and similar purposes.

3. Any future structural additions to the Enclosed Mall or to the Shopping Center shall be subject to the prior written approval of ZCMI, Penney and Mervyn's. However, Developer shall have the right to complete construction of Developer Non-Mall Stores, NM 7, NM 8 and NM 9 and the addition to NM 5 aggregating no more than 44,566 square feet of Floor Area at locations shown and so designated on Exhibit B-1.

4. Developer Non-Mall Stores have been constructed and are designated and shown as NM 1, NM 2, NM 3, NM 4, NM 5 and NM 6 on said Exhibit B-1.

5. Automobile Parking Areas have been constructed by Developer in sufficient amount to provide at least six (6) cars per 1,000 square feet of Floor Area in the Phase 2 building improvements and to maintain at least six (6) cars per 1,000 square feet of Floor Area in entire Developer Tract, including

all Developer Mall Stores and Developer Non-Mall Stores as designated on Exhibit B-1.

7. Section VI captioned "CONSTRUCTION OF COMMON AREAS" is amended as follows:

a. In Section VI A on page 35 in line 2 of the first paragraph after the word "Improvements" insert the words "in Phase 1 and Phase 2, respectively"; and in line 5, after the words "any Party" insert the words "whose Tract is involved in Phase 1 or Phase 2, respectively"; and in line 16 after the word "Parties" insert the words "contracting for or contributing to payments"; and in line 17 before the word "Parties.", delete the word "the" and insert the word "such"; and on page 35 in line 6 of the second paragraph of Section VI A, and in line 1 of the third paragraph of Section VI A, and on page 36 in lines 3, 6, 9 and 11 of the fourth paragraph of Section VI A, and in line 4 of the fifth paragraph of Section VI A, and in line 6 of the sixth paragraph of Section VI A, insert the word "contributing" before the word "Parties". In the last paragraph of Section VI A on page 37 after "ZCMI" in line 10 insert the words "as to Phase 1 work have paid, and as to Phase 2, Mervyn's has paid", and on lines 10 and 11 delete the words "shall promptly pay", and in lines 5, 6 and 14, before the word "Parties" insert the word "contributing", and in line 16 after the words "Site Engineer" insert the words "approved by contributing Parties".

b. At the end of Section VI B 6 on page 38, insert ", such landscaping having been completed as part of Phase 1".

c. In Section VI B 7 on page 38 in line 7 after "ZCMI Store" insert ", and/or the Mervyn's Store."

d. In Section VI B 10, line 2, page 39 after the word "improvements" insert the words "outside the Shopping Center Site"; and at the end of line 4 after the word "Penney" insert the words ", ZCMI or Mervyn's. Perimeter landscaping and curbing within adjacent highways and any entrance roadways, however, is not considered off-site."; and at the end of line 5 after the word "ZCMI" insert "and Mervyn's".

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e. In the third paragraph of Section VI B 10 at the top of page 40 at the end of line 4, insert the words "and as to the Phase 2 work shall be paid in due course upon invoice from Developer accompanied by evidence that Developer has advanced such payment and certifying that the work evidenced thereby has been performed; provided however, that notwithstanding the foregoing if a contrary procedure is specified in any agreement between Developer and a contributing Party such procedures shall control."

f. In Section VI B 10 in the third paragraph on page 40, in line 2, insert after "REA" the words "for the Phase I Common Improvement Work."

g. In the next to last paragraph of Section VI B 10 on page 41 in line 1 after "ZCMI" insert "or Mervyn's,"; and in line 2 before the word "work" insert "common improvement"; and in line 4 before the word "Party" delete "a" and insert "such".

h. In Section VI D on page 42 add at the end the following: "Mervyn's agrees that the common improvement work with regard to Phase 2 expansion was completed at least thirty (30) days prior to the opening of the Mervyn's Store."

i. In the second full paragraph of Section VI E on page 42, line 8 before the word "on" insert "provided for"; and after the word "hereto" insert "including the Phase 2 expansion,"; and in line 9, delete "hereto" and insert "in this REA"; and at the end of that paragraph after the word "driveways" insert "unless otherwise shown on Exhibit B-1."

j. In Section VI E 2 on page 43, at the end after the word "Parties" insert ", or required by public authority."

k. A new Section VI F 6 shall be added on page 44 as follows:

"6. The interior design concept of the Phase 2 Enclosed Mall will be substantially similar to that used in Phase 1 Enclosed Mall, and has been submitted to Penney and Mervyn's for approval and has been approved."

8. Section VII captioned "CONSTRUCTION OF PENNEY STORE" is amended as follows: Add the following paragraph F:

"F. Penney has heretofore constructed its Store in accordance with the REA, which Store opened for business March 7, 1973."

9. Section VIII captioned "CONSTRUCTION OF THE ZCMI STORE" is amended as follows: Add the following as paragraph VIII E;

"E. ZCMI has heretofore constructed its Store in accordance with the REA, which Store opened for business the day after Thanksgiving in November, 1972."

10. A new Section designated as Section VIII-I shall be added as follows:

"VIII-I CONSTRUCTION OF MERVYN'S STORE

A. Mervyn's agrees as soon as reasonably possible after completion of its approved final plans and specifications for the Mervyn's Store, but not later than November 1, 1980, to cause construction of the Mervyn's Store to be commenced and thereafter to use its best efforts to complete on or before "Mervyn's scheduled opening date" in 1981, but shall complete no later than August 1, 1981, provided that such obligation shall be subject to the provisions of Section XVI hereof. Anything herein to the contrary notwithstanding, Mervyn's is not obligated to commence construction until Developer has commenced construction of the Phase 2 Developer Improvements, as provided for in Section V hereof.

B. The Mervyn's Store shall have not less than 80,000 square feet of Floor Area, shall be two stories in height, shall include not less than 40,000 square feet of Floor Area on each level, and may contain such other features, including, but not limited to, an enclosed or open loading dock as Mervyn's may determine. In no event shall the the total Floor Area of the Mervyn's Store exceed 93,000 square feet. All work performed pursuant to this Section VIII-I shall be made in accordance with the approved final Store plans and the other requirements of this REA.

C. Plans and specifications of the Mervyn's Store shall be prepared by Mervyn's as soon as reasonably possible after Mervyn's has obtained a survey showing the location of the property lines within the Center, sewer and utility line plans, and the topography of the land showing all proposed finished grades, and Mervyn's shall have received soil reports and analysis based on test borings, and other data pertaining to the site as may be reasonably required for the preparation of such plans and specifications.

All such plans and specifications shall be submitted to Developer for Developer's review and approval as to exterior design thereof, for the purpose of coordinating the Mervyn's Store with the design of the Phase 2 Enclosed Mall expansion.

D. Developer shall make available to Mervyn's, and Mervyn's shall reimburse Developer for Developer's cost and expenses for installing and providing water and electricity in such quantities as are reasonably necessary for Mervyn's use during construction, unless such utilities are available directly from the suppliers thereof.

E. Mervyn's has heretofore constructed its Store in accordance with REA which Store opened for business on July 17, 1981, along with more than 50% of the Phase 2 Developer Mall Store Floor Area."

11. Section IX captioned "FLOOR AREA AND AUTOMOBILE PARKING REQUIREMENTS AND LIMITATIONS" is hereby amended as follows:

a. In Section IX A on page 46 in line 4 insert "Mervyn's Tract" after the words "ZCMI Tract".

b. In Section IX B on page 47 in line 3 add an "s" to make the word "Section" plural and after "VII" add "VIII and VIII-I".

c. In Section IX B 3 on page 47 in line 1, on page 47 after the word "Improvements" insert "in Phase 1"; and add the following new paragraph to such paragraph 3 and new paragraph 4:

"The Developer Improvement in Phase 2 as shown on Exhibit B-1, shall include the Phase 2 Enclosed Mall and base-

ment storage areas, and shall contain not less than 85,000 square feet nor more than 105,000 square feet of Developer Mall Store Floor area (exclusive of Mervyn's Store described in Section VIII-I), and not more than 27,980 square feet Floor Area plus 1,308 square feet of basement area of Non-Mall Stores in Developer Non-Mall Stores 1, 2, 3, 4, 5, and 6, and not more than 44,566 square feet Floor Area of future Non-Mall stores in Developer Non-Mall stores 5 (addition to existing structure) 7, 8 and 9 to be erected where shown on Exhibit B-1.

4. The Mervyn's Store shall contain not less than 80,000 square feet of Floor Area with not less than 40,000 square feet on each of two levels, and no more than 93,000 square feet of Floor Area. Initial building areas are shown on Exhibit "B-1".

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d. In Section IX B 4 on page 48 in line 1, change the number of paragraph "4" to paragraph "5".

e. In Section IX C on page 48 add at the end of the indented paragraph the following: "Developer may use mezzanine area in Developer Mall Store Building E for office purposes."

f. In Section IX F on page 49 in line 3 of the first paragraph after the word "Mall" insert "within 110 feet of any Party's Store"; and delete the words "Penney and ZCMI" in lines 3 and 4 and insert "such Party"; and in second paragraph line 1 after "ZCMI" insert ", Mervyn's" and delete "six (6)"; in line 2 delete "B" and insert "B-1"; and in line 8 after word "withheld" insert ", and that Mervyn's shall have the right to approve the exterior design, finish, height and occupancy of the two kiosks closest to its store, such approval not to be unreasonably withheld."; and in lines 9 and 10 delete "two (2)" and delete "closest to the center court"; and add the following third paragraph of Section IX F:

"There shall be no permanent, temporary or seasonal kiosk in Enclosed Mall except at locations shown on Exhibit B-1. No such kiosk location is within 110 feet of Penney, ZCMI or Mervyn's Stores. No such kiosk

may exceed ten (10) feet in width or twenty (20) feet in length or eight (8) feet in height. No such kiosk shall be used for sale of food or beverage for consumption on premises, although this restriction shall not preclude the sale of candy. No such kiosk shall contain a coin operated amusement device. Developer shall cause removal of any such kiosk which remains vacant for more than one hundred twenty (120) consecutive days upon request of any Party to this REA. There shall be no push cart permitted in the Enclosed Mall."

12. Section X captioned "GENERAL CONSTRUCTION REQUIREMENTS" is amended as follows:

a. In Section X D on page 51 in line 1 after the word "ZCMI" insert ", Mervyn's".

13. Section XI captioned "OPERATION AND MAINTENANCE OF COMMON AREA" is amended as follows:

a. In Section XI A on page 52 at the end of the first paragraph after the word "areas" insert the following: "except as hereinafter provided in Section XIV C in the event of damage or destruction, and shall keep the Common Areas open at all times when the retail operations on any of the Developer Tract, the ZCMI Tract, the Penney Tract or the Mervyn's Tract are open for business and for not less than one-half hour before and three-quarters of an hour after such operation or operations are open."

b. Section XI A 12 on page 54 should be deleted and Section XI A 13 should be renumbered as XI A 12.

c. In Section XI B on page 54 in line 4 of first paragraph and in lines 1, 2, and 7 of second paragraph and on page 55 in lines 1 and 11 of third paragraph, after the word "ZCMI" insert the words ", and Mervyn's"; and on page 55, line 11 of the third paragraph, after the word "ZCMI" add the words "and by Mervyn's"; and in line 16 of the third paragraph after

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the words "ZCMI's share" insert the following: "and the number of square feet of Floor Area similarly weighted within the Mervyn's Improvements as to Mervyn's share," and on page 55(a) in line 1 of the fourth paragraph delete the words "either department store" and insert "Penney, ZCMI or Mervyn's"; and add and "s" to the word "store" as the last word in line 2 of said paragraph; and in line 1 of the fifth paragraph delete the word "either" and insert "any such"; and in line 12 delete the words "the other" and insert "any other"; and in line 2 of the sixth paragraph, after the word "Penney" insert "and/or Mervyn's"; and in lines 10 and 19 on page 56 delete the word "both" and insert the word "all"; and in line 28 delete the word "either" and insert "any"; and in lines 30 and 31 insert the word "Store" before the word "buildings".

f. In Section XI C, first paragraph on page 58 in line 7 after the word "ZCMI Tract" insert "or the Mervyn's Tract"; and in line 3 of the second paragraph after the word "ZCMI" insert "or Mervyn's"; and in line 6 of the second paragraph on page 58 after the word "ZCMI" insert "," Mervyn's"; and in line 3 on page 59, after "ZCMI Tract" insert "the Mervyn's Tract"; and on line 4, after the word "Developer" delete the word "Tract" and insert "Mall Stores". In line 1 of the third paragraph after "ZCMI" insert "," Mervyn's"; and in line 5 after "air conditioning equipment" insert "," (vii)"; and in line 10 after the word "equipment" insert "supplied by Developer."; and in line 25 insert at the beginning of the line "and Mervyn's"; and on page 60 insert a new sixth paragraph as follows:

"Such portion payable by Mervyn's shall be in that proportion which the number of lineal feet of its Store building abutting the Enclosed Mall bears to the number of lineal feet of all store buildings in the Shopping Center abutting the Enclosed Mall, but in no event to exceed a sum equal to five cents per square foot of Floor Area within the main level of the Mervyn's

Store building abutting the Enclosed Mall.;

and in line 1 of the seventh paragraph after the word "ZCMI" insert ", Mervyn's"; and on page 61 line 4, after the word "ZCMI" insert ", Mervyn's".

14. Section XII captioned "INDEMNIFICATION AND PUBLIC LIABILITY INSURANCE" is amended as follows:

a. In Section XII A on page 61 in lines 10 and 12 insert before the word "negligent" the words "intentional wrongful act or".

b. In Section XII B on page 61 lines 6 and 7 delete "One Million Dollars (\$1,000,000)" and insert "Five Million Dollars (\$5,000,000)".

15. Section XIII captioned "FIRE AND EXTENDED COVERAGE INSURANCE" is amended as follows:

a. In Section XIII B on page 63 in lines 1, 9, 10, 13 and 17 insert ", Mervyn's" after the word "Penney".

b. In Section XIII C on page 64 in line 2 after "ZCMI and" insert "Mervyn's" and delete "any future third department store leasing premises on the Developer Tract from the Developer"; and in line 15 delete "\$20,000,000" and insert "\$100,000,000 and net annual assets of \$50,000,000"; and in line 20 after the words "ZCMI and" insert "Mervyn's" and delete "any future third department store".

c. In Section XIII D on page 64 in line 2 after the word "each" insert "or of their respective occupants."

d. In Section XIII E on page 65 in line 3 after the word "REA" insert "or to their respective occupants."

e. In Section XIII F on page 65 in line 3 after the words "Developer Tract," insert "and Penney, ZCMI and Mervyn's covenant in connection with fire and extended coverage insurance required under XIII D carried by Occupants of their respective Tracts, that each" and delete the words "to and with Penney and ZCMI, that it"; and in line 5, delete the words "the Developer" and insert "its respective"; and in line 10 after the words

"Developer Tract" insert "Penney Tract, ZCMI Tract or Mervyn's Tract"; and delete the last sentence of such Section XIII F on page 65 which sentence begins on line 12.

f. In Section XIII G on page 65 in line 8, delete the word "security" and insert the word "trustee"; and on line 9 after "ZCMI" add the word "Mervyn's".

16. Section XIV captioned "COVENANTS AS TO REPAIR, MAINTENANCE, ALTERATIONS AND RESTORATION" is amended as follows:

a. In Section XIV B on page 67 in line 1 insert the word "Mervyn's" after "Penney" and in line 3 insert the words "the Mervyn's Store" after "Penney Store" and in line 7 insert the words "Mervyn's Improvements" after "Penney Improvements".

b. In Section XIV D 1 on page 68 in line 1, insert "and Mervyn's" after the word "ZCMI"; and in D 1(a) line 4, delete "and XXIV" and insert "XXIV and XXIV-1"; and in paragraph D 1(b) on page 69 in lines 4 and 5 delete the words "both Penney and ZCMI are not" and insert "neither Penney nor ZCMI nor Mervyn's is"; and on page 69 in line 8 delete "and XXIV" and insert "XXIV and XXIV-1".

c. In Section XIV D 2 on page 69 in line 1 insert "Mervyn's" after the word "Penney"; and in line 4 insert "or Mervyn's" after the word "Penney"; and in line 3 in paragraph 2(a), add the word "Store" after the word "Penney"; and in line 5 insert "and XXIV-1" after "XXIV"; and at the end of line 7 insert "or the Mervyn's Store".

d. In Section XIV D 3 on page 70 in line 2 insert "or Mervyn's" after the word "ZCMI".

e. In Section XIV E on page 70 in line 2 insert "Mervyn's" in line 2 after the word "Penney" and in line 5 insert "and the Mervyn's Improvements" after "ZCMI Improvements".

f. In Section XIV G on page 72 in line 2 insert "Mervyn's" after the word "ZCMI"; and in line 3 in subparagraph 2

insert "and the Mervyn's Store" after "Penney Store"; and, on page 73 in line 2 in subparagraph 3 insert "and/or the Mervyn's Store" after the word "Penney Store"; and in the second paragraph in line 22 after the word "Store" insert "and the Mervyn's Store,".

17. Section XV captioned "MERCHANTS ASSOCIATION", is amended as follows:

a. In Section XV A on page 77 in line 1 delete "agrees to organize, form and sponsor" and insert "has heretofore organized, formed and sponsored"; and in line 2 insert ", Mervyn's" after the word "Penney"; and in line 6, add an "s" to the word "other" and insert "or Mervyn's" after the word "Penney"; and in line 11 insert the word ", Mervyn's" after the word "ZCMI"; and in line 17, insert the words "and Mervyn's," after the word "Penney."

b. In Section XV B line 1 after the word "ZCMI" insert ", Mervyn's"; and in line 3 after the word "ZCMI's" insert ", Mervyn's"; and in line 8 delete "ZCMI and Penney shall not be" and insert "neither ZCMI nor Penney nor Mervyn's shall be"; and in line 11 after "Penney Store" insert ", Mervyn's Store".

c. In Section XV C on page 78 in lines 5 and 6 delete "the Future (third) Department Store, if any," and insert "Mervyn's".

18. Section XVI captioned "EXCUSE FOR NON-PERFORMANCE", is amended as follows:

a. In Section XVI A on page 78 in lines 1 and 15 after the word "ZCMI" insert ", Mervyn's"; and in line 7 insert the word "of" after the word "actions".

b. In Section XVI B on page 78 in line 1 after the word "ZCMI" insert "and Mervyn's"; and after "XXIII" in line 4 and in line 3 on page 79 insert ", XXIV-I".

c. In Section XVI C on page 79 in line 3 delete the word "both" and after the word "Penney" insert ", Mervyn's"; and on line 4 after "XXIV" insert "and XXIV-I."

19. Section XVII captioned "TAXES AND ASSESSMENTS", is amended as follows:

a. In Sections XVII A on page 79 and XVII B on page 80, in line 1, and in XVII C lines 1, 6 and 12 insert ", Mervyn's" after the word "ZCMI"; and in Section XVII C line 8 on page 80 after "ZCMI Tract" insert ", Mervyn's Tract".

20. Section XVIII captioned "CONDEMNATION", is amended as follows:

a. In Section XVIII B 2(b) on page 82 in line 1, after the word "ZCMI" insert ", Mervyn's".

21. Section XIX captioned "CORRECTION OF SITE DESCRIPTIONS" is amended as follows:

a. On page 86 in line 2 after "Store" insert ", the Mervyn's Store"; and on line 4 after "Exhibit B" insert "or Exhibit B-1."; and on line 5 after "deliver" insert "and have delivered"; and in line 9 after the word "thereof" insert the following: "Such "as-built" drawings resulted in amendments to the description of the Penney Tract and Developer Tract which were accomplished through execution of the FIRST AMENDMENT. Developer and Mervyn's have also agreed to obtain and deliver to each other at its respective cost and expense, an as-built survey of their respective Tracts and Store or Developer Improvements."

b. In lines 15 and 22 after "Exhibit B" insert "or Exhibit B-1"; and in line 26 after letter "F" insert ", and FF"; and in line 29 and 30 delete "II d, E and F" and insert ", II D, E, F, and FF."

22. Section XX captioned "SIGNS" is amended as follows:

a. In Section XX A on page 87 in line 6 after the words "Penney and" insert "Mervyn's." and delete the balance of the sentence.

b. Section XX B, lines 4 and 8 are amended by inserting ", Mervyn's" after the word "ZCMI".

23. Section XXI captioned "RULES AND REGULATIONS" is amended

as follows:

a. On page 87 in line 1 after the word "ZCMI" insert "and Mervyn's".

24. Section XXII captioned "COVENANTS OF DEVELOPER" is amended as follows:

a. In Section XXII A 2(c) on page 88 in line 1 before the word "Occupants" insert "Developer Mall Store"; and in line 3, after the word "ZCMI" insert "or Mervyn's";

b. In Section XXII A 3 in line 4 add ", and/or Mervyn's" after the word "Penney".

c. In Section XXII A 4 on page 89 in line 3 insert ", Mervyn's" after the first "Penney", and in line 4 after the words "Penney Tract" insert "or so long as Mervyn's is the Occupant of the Mervyn's Tract, or"; and in line 6, insert ", Mervyn's" after the word "Penney".

d. In Section XXII A 5 lines 6 and 7 delete the words "Mall Stores, exclusive of the Floor Area within the Future (third) Department Store." and insert the following: "Phase 1 Developer Mall Stores, and so as to have not less than 57,300 square feet of Floor Area within the Phase 2 Developer Mall Stores both on the date Mervyn's opens for business, and thereafter."

e. Section XXII A 6 on page 89 is deleted.

f. Section XXII B on page 89, 90 and 91 is deleted.

25. Section XXIII captioned "PENNEY COVENANTS" is amended as follows:

a. Section XXIII A on page 92 in lines 24, 25 and 26 delete the sentence "The hours of business for such retail facility shall be such reasonable hours as Penney in its sole and absolute discretion may determine." and insert the following: "The hours of business, the number and types of departments to be operated in each such retail facility, the particular contents, wares and merchandise to be offered for sale and the services to be rendered, the methods and extent of merchan-

dising and storage thereof, and the manner of Operating such retail facility in every respect whatsoever shall be within the sole and absolute discretion of Penney."; and in line 3 on page 93 after the word "facility" insert "in its main store building", and in line 5 before the word "Mall" insert "Phase 1 Developer Mall Stores and at least fifty-seven thousand three hundred (57,300) square feet of Floor Area in the Phase 2 Developer", and in line 6 after "XXII" insert "and either ZCMI or Mervyn's are Operating in compliance with Section XXIV and XXIV-I, respectively."

26. After Section XXIV insert a new Section XXIV-I captioned "MERVYN'S COVENANTS" as follows:

"XXIV-I MERVYN'S COVENANTS

A. Mervyn's covenants and agrees, subject to provisions of Sections XIV, XVI, XVIII, XXII A, and XXIV-I A, and subject to the other provisions of this Section as soon as reasonably practicable after the completion of construction of its Store, pursuant to Section VIII-I of this REA, but, subject as aforesaid, within sixty (60) days after completion thereof, that it will cause to be opened in its Store building a department store and related facilities of not less than eighty thousand (80,000) square feet of Floor Area, under the trade name "Mervyn's" or such other name as at least five of the Mervyn's stores in the Utah trade area are operating under, which Store will consist of two (2) levels containing not less than forty thousand (40,000) square feet of Floor Area on each level. Notwithstanding the foregoing, it is expressly understood that Mervyn's shall not be required to open its Store for business prior to sixty (60) days after completion of its said Store, or during the period from November 1 of any year to March 1 of the next succeeding year, or during the period from March 10 to June 30, or between August 1 and September 30. Notwithstanding anything to the contrary contained in the preceding sentence, the covenant to operate of Mervyn's contained in this Section shall be suspended at the election of Mervyn's, which suspension shall be effective only during the time Developer shall substantially

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fail to perform its covenants set forth in Section XXII A hereof, (all of such Sections being subject to Sections XIV and XVI) after Mervyn's shall have given Developer thirty (30) days notice of its default thereunder (and in the event of such notice Developer shall have commenced curing such default and diligently prosecutes such curing, then during such period there shall be deemed to be no default); and during such time as Developer continues to be in default after such notice; provided, however, nothing contained in the foregoing provisions of this sentence shall in any manner be construed as diminishing or be deemed to constitute a waiver of any other rights of Mervyn's resulting from the failure of Developer to perform its covenants set forth in Section XXII hereof. The hours of business, the number and types of departments to be operated in each such retail facility, the particular contents, wares and merchandise to be offered for sale and the services to be rendered, the methods and extent of merchandising and storage thereof and the manner of operating such retail facility in every respect whatsoever shall be within the sole discretion of Mervyn's. The term "department store", as used in this Section XXIV-I shall mean a retail facility occupying substantially all of the Store building in which the same is located, and following the merchandising practices generally similar to merchandising practices of Mervyn's from time to time, giving consideration to the varying merchandising requirements of particular areas. Mervyn's agrees that having opened its retail facility for business, so long as at least one hundred seventy-five thousand (175,000) square feet of Floor Area in the Phase 1 Developer Mall Stores and at least fifty-seven thousand three hundred (57,300) square feet of Floor Area in the Phase 2 Developer Mall Stores are being operated in compliance with Section XXII, and either Penney or ZCMI are operating in compliance with Section XXIII and XXIV respectively, it will thereafter operate said business (i) as a Mervyn's retail department store for the lesser of ten (10) years or until the date a similar covenant first expires for either Penney or ZCMI (ii) for the lesser of the next ten (10)



years or the period of time up to the date the retail facility covenant first expires for either ZCMI or Penney, as a retail facility to be operated in substantially all its store building and (iii) for the lesser of the next ten (10) years or the period of time up to the date the first floor retail purpose covenant first expires for either ZCMI or Penney, to cause substantially all of the first floor of its store building to be used for retail purposes.

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B. Notwithstanding anything to the contrary herein contained, Mervyn's may:

(1) Lease portions of the Mervyn's Store Building or license departments thereof or grant concessions to other parties; and

(2) Sublease the Mervyn's Tract or lease or sell the Mervyn's Store to any subsidiary corporation of Mervyn's or to any corporation which may succeed to Mervyn's business in the State in which the Mervyn's Tract is situated or to any corporation which may, as the result of reorganization, merger, consolidation or sale of stock or assets, succeed to such business, and in either such case, Mervyn's shall be released from all further obligations under this Agreement if such sublease is to a corporation which acquires all or substantially all of the assets of Mervyn's and which, by written instrument in recordable form, expressly assumes all of Mervyn's obligations hereunder; and

(3) Mortgage its Building and/or sell and leaseback its Building or sublease and sub-subleaseback its Tract, and in connection with any such transaction assign its interest in this Agreement. If any such mortgage is foreclosed or a deed delivered in lieu of foreclosure, or if Mervyn's, having entered into such a sale and leaseback of its Building or sublease and sub-subleaseback transaction involving its Tract, shall be deprived of possession of such Building or Tract by reason of its failure to comply with the terms of such leaseback or sub-subleaseback, anyone who has acquired, or shall thereafter acquire, title to such Building or a leasehold estate in such Tract, shall hold the



same free of any requirement that a Mervyn's retail department store, retail facility and/or retail facilities be operated on such Tract. The provisions of this subsection (3) shall not relieve Mervyn's of any liability or other responsibility on account of its default thereunder, except specific performance."

27. Section XXV captioned "MUTUAL COVENANTS" is amended as follows:

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a. In Section XXV A on page 97 in line 2 after "XXIV" insert "and XXIV-1"; and in line 3 after the word "ZCMI's," insert "Mervyn's"; and in line 8 after "ZCMI Tract" insert ", Mervyn's Tract".

b. In Section XXV B on page 97 in lines 1 and 9, insert ", Mervyn's" after the word "ZCMI"; and in lines 6 and 11 after "ZCMI Tract" insert ", Mervyn's Tract".

c. In Section XXV C on page 98 in lines 2 and 5 insert ", Mervyn's" after the word "ZCMI".

d. Insert a new Section XXV D on page 98 as follows:

"D. Each of Penney, ZCMI and Mervyn's may elect to be released from its covenants to operate contained in Section XXIII, XXIV and XXIV-1 of this SECOND AMENDMENT in the event any one or more of the following conditions occurs:

1. If the Developer defaults in performance of any one of its covenants set forth in Section XXII A 1, 2, 3, 5 and 7, hereof, and fails to cure such default within sixty (60) days after written notice to cure, or if such default cannot be cured within sixty (60) days, fails to commence curing within such time and to diligently achieve such cure within a reasonable time thereafter.

2. If less than sixty percent (60%) of the Floor Area of the Phase 1 Developer Mall Stores is occupied and open for business, or less than sixty percent (60%) of the Floor Area of the Phase 2 Developer Mall Stores is occupied and open for business, or if Landlord fails to require that lessees of 60% or more of the Phase 2 Developer mall stores

remain open for business during hours that both Penney and Mervyn's are open, including Sundays and other holidays, or if Landlord fails to diligently enforce such leases, and if any such condition continues for a substantially continuous period of one hundred eighty (180) days after written notice to the Developer to cure such condition, except in event of any damage or destruction which shall be restored in accordance with the provisions of Section XIV and Section XVI or any extended cure periods otherwise available for a default. Such condition shall be conclusively deemed to have been remedied if during said one hundred eighty (180) day period bona fide leases are executed which require the opening for business of Floor Area of the respective Phase 1 or Phase 2 Developer Mall Stores sufficient to cure such condition, which bona fide leases shall provide for the actual commencement of occupancy of such required minimum Floor Area within said one hundred eighty (180) day period.

3. If any one (1) of the Penney, ZCMI or Mervyn's Stores, having opened for business, thereafter cease for any reason to be Operated pursuant to Sections XXIII, XXIV and XXIV-1, respectively, for a period in excess of six (6) consecutive months.

4. If two such Stores referred to in previous paragraph shall be released from the performance of their respective restoration obligations under Section XIV 2.

5. If the automobile parking areas within the Shopping Center, or accesses thereto are reduced by more than twenty (20) percent, or the automobile parking areas within four hundred (400) feet of the respective Penney or Mervyn's Stores are reduced by more than ten (10) percent for a period of one hundred eighty (180) days, or more.

Nothing contained in this Section XXV-D shall in any manner be construed as diminishing, or be deemed to constitute a waiver of, any other rights of Penney, ZCMI or Mervyn's resulting from

the failure of the Developer to perform its covenants set forth in Section XXII or elsewhere in this REA or from the default of any other Party hereunder. Upon the occurrence of an event described in subparagraphs 1, 2, 3 or 4 above, any one of Penney, ZCMI or Mervyn's electing to implement this release provision shall give written notice of such occurrence and of such intent to each of the other Parties.

Any release from the covenants and obligations under Sections XXIII, XXIV or XXIV-1 pursuant to this Section XXV D shall be effective after failure to cure such event of default within the times provided herein, and the giving of written notice to each of the other Parties of its election to be released and the events giving rise to such election, and thereupon the Operating covenant of the electing one of Penney, ZCMI or Mervyn's as provided in Sections XXIII, XXIV or XXIV-1, respectively, and its covenant to restore as provided in Section XIV D, shall terminate; and such electing Party thereupon shall be released from such covenants and shall not be required to continue or reinstate the Operation of its Store, notwithstanding any subsequent tardy curing of any event or condition referred to herein. Continued Operation by such Party of its Store following said notice shall not diminish the effect of such notice nor the release of such electing Party.

If any one Party is released from its Operating covenant pursuant to the provisions of this Section XXV D, from and after the effective date of such release such Party shall not be entitled to enforce the provisions of Section XXIII, XXIV or XXIV-1, respectively, against any other Party. Such estoppel shall not apply to any other provision of this REA.

28. Section XXVIII captioned "NOTICES" on page 100 is amended as follows:

a. The address of Developer is:

University Mall Shopping Center
2677 Parleys Way
Salt Lake City, Utah 84109

with a copy to:

University Mall Shopping Center
E-205 University Mall
Orem, Utah 84058

b. The address of ZCMI is:

Zions Cooperative Merchantile Institution
2200 South 900 West
Salt Lake City, Utah 84119

with a copy to:

Zions Cooperative Merchantile Institution
University Mall Shopping Center
Orem, Utah 84058

c. The address of Penney is:

J.C. Penney Properties, Inc.
c/o J.C. Penney Company, Inc.
1901 North Roselle Road
Schaumburg, IL 60195
Attention: Real Estate Counsel

with a copy to

J.C. Penney Company, Inc.
University Mall Shopping Center
Orem, UT 84058

d. The address for Mervyn' is:

Mervyn's
25001 Industrial Boulevard
Hayward, CA 94545
Attention: Chairman

with a copy to:

Mervyn's
22301 Foothill Boulevard
Hayward, CA 94541
Attention: Real Property Administrator

29. Section XXX captioned "TERMINATION OF REA" on page 102 is amended as follows:

a. In line 3, after "REA" insert "(October 2, 1971)"; and in line 4, after the word "ZCMI" insert "or Mervyn's"; and delete "or the Future (third) Department Store" and in lines 5 and 6, delete "one hundred twenty thousand (120,000)" and insert "sixty thousand (60,000)".

30. Section XXIII captioned "TBA's" is amended as follows:

a. In Section XXIII on page 103 add at the end:

"C. Nothing herein contained shall prevent ZCMI from granting a non-exclusive right to use a strip of ground in the ZCMI Tract constituting approximately the northerly six (6)

feet adjacent to its TBA (0.018 acres) to the owner of adjacent "Parcel B" (First Security Bank of Utah, N.A.)".

31. Section XXXIII captioned "DEDICATION" is hereby amended as follows:

a. On page 104 in line 1 insert ", Mervyn's" after the word "Penney".

32. Section XXXIV captioned "FUTURE EXPANSION OF FLOOR AREA" is hereby amended as follows:

a. Section XXXIV B on pages 104 and 105 is deleted, and replaced with following: "B. Developer shall have no right to future expansion for Developer Mall Store floor area without the prior written approval of ZCMI, Penney and Mervyn's."

b. In Section XXXIV D on page 106 in line 2 after the words "Exhibit B" insert "or Exhibit B-1".

33. Section XXXV captioned "PHASE 2 TRACT AND FUTURE SC-1 TRACT" is deleted.

34. Section XXXVI "MISCELLANEOUS" is amended as follows:

a. In Section XXXVI H on page 111 in lines 3, 4 and 5 insert ", Mervyn's" after the word "ZCMI"; and in line 4 after "XXIV" insert "and XXIV-I".

b. In Section XXXVI I on page 112 in line 4 after the first word "thereof" insert "or in the case of Mervyn's its leasehold interest in its Tract, the assignee or"; and in line 11 after the words "fee interest" insert "(or leasehold interest in case of Mervyn's)"; and in line 12 after the word "conveyed" insert ", assigned"; and in line 17 after the word "Penney" insert "and Mervyn's"; and in line 18 after "XXIV" insert "and XXIV-I"; and in line 24 after the word "sale" insert ", assignment,"; and in line 29 after "VIII" insert "and VIII-I" and in the last line of the paragraph on page 112(a) after "XXIV", insert "or XXIV-I"; and in line 8 of the second paragraph on page 113 after "XXIV" insert "or the covenants of Mervyn's as provided in Section XXIV-I."

c. In Section XXXVI L on page 116 in line 6 delete the word "either" and insert "any", and in lines 6, 8, 10 and 15

insert "or Mervyn's" after the word "ZCMI" or the word "ZCMI's"; and on page 117 in line 17 insert the words "or leasehold" after the word "fee"; and in the first full paragraph on page 118 in line 1 delete the word "no".

35. Exhibit A Parts I through VI of the EXISTING REA, containing the description of the Shopping Center Tracts, is hereby deleted, and Exhibit A, Parts I through V, attached to this SECOND AMENDMENT is incorporated herein by reference, containing the descriptions of the Tracts within Shopping Center as now constituted, so that each reference in the REA to said Exhibit A shall be deemed to refer to Exhibit A attached hereto.

36. Exhibit B to the EXISTING REA, the Plot Plan of the Shopping Center, is hereby deleted, and Exhibit B, Sheets 1, 2 and 3, attached to this SECOND AMENDMENT and incorporated by this reference, is substituted therefor, so that each reference in the REA to said Exhibit B shall be deemed to refer to Exhibit B attached hereto.

37. Exhibit C to the REA on lines 5 and 6 is hereby amended by deleting "Future (third) Department Store" and inserting "Mervyn's", and adding at the end of said Exhibit the following:
"Phase 2 Developer non-mall stores: 24 feet from ground floor to top of parapet".

38. To the extent, if at all, any provision of this SECOND AMENDMENT is not enforceable against any Person, by reason of priority of interest or right, the EXISTING REA shall, in addition to the enforceable provisions of this SECOND AMENDMENT, remain binding upon such Person, and such Person shall not be entitled to any benefit, directly or indirectly, under this SECOND AMENDMENT, unless such Person agrees in recordable form to be bound hereby.

Except as amended by this SECOND AMENDMENT, the REA remains in full force and effect according to its terms and is binding on each of the Parties.

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

ATTEST:

UNIVERSITY MALL, INC.

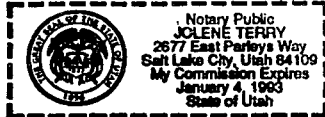
Vice President

By: Wallace R. Woodbury
Wallace R. Woodbury, President

By: Orin R. Woodbury
Orin R. Woodbury, Secretary

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

On this 3RD day of SEPTEMBER, 1991, before me personally appeared WALLACE R. WOODBURY and ORIN R. WOODBURY, known to me to be the President and Secretary of UNIVERSITY MALL INC., the corporation that executed the within instrument known to me to be the persons who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its Bylaws or a resolution of its Board of Directors.



Jolene Terry
Notary Public
Residing at: Salt Lake City, Utah

My commission expires: 1-4-93

UNIVERSITY MALL SHOPPING CENTER, a general partnership

By: Wallace R. Woodbury
Wallace R. Woodbury
Attorney in Fact

By: Orin R. Woodbury
Orin R. Woodbury
Attorney in Fact

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

On this 3RD day of SEPTEMBER, 1991, before me personally appeared WALLACE R. WOODBURY and ORIN R. WOODBURY, known to me to be the Attorney in Fact for UNIVERSITY MALL SHOPPING CENTER, a Utah general partnership, who executed the within instrument on behalf of said general partnership, and acknowledged to me that said attorneys in fact executed the within instrument pursuant to a written and recorded partnership power of attorney.



Jolene Terry
Notary Public
Residing at: Salt Lake City, Utah

My commission expires: 1-4-93

ATTEST:

ZIONS COOPERATIVE MERCANTILE INSTITUTION

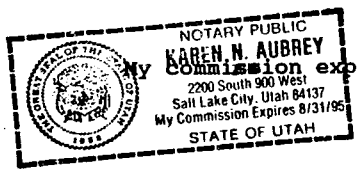
Keith Chambers

By: Richard H. Maden, President

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

On this 21st day of August, 1991, before me personally appeared Richard H. Maden, known to me to be the President of ZIONS COOPERATIVE MERCANTILE INSTITUTION, the corporation that executed the within instrument, known to me to be the person who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its Bylaws or a resolution of its Board of Directors.

Karen N. Aubrey
Notary Public
Residing at: Sn County



ATTEST:

MERVYN'S

Sue Jones

By: Gene Brown
VICE PRESIDENT

STATE OF CALIFORNIA)
) : ss.
COUNTY OF ALAMEDA)

On this 22nd day of August, 1991, before me personally appeared Anne C. Broome, known to me to be the a Vice President of MERVYN'S, the corporation that executed the within instrument, known to me to be the person who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its Bylaws or a resolution of its Board of Directors.

Nancy G. Bronzini
Notary Public
Residing at: Hayward, CA County (ALAMEDA)

My commission expires: 8-1-92



(Handwritten initials)

ATTEST:

J.C. PENNEY COMPANY, INC.,
successor in interest to
J.C. Penney Properties, Inc.

Concluded

BY: *Michael Lowenkron*

STATE OF TEXAS)

:ss.)

COUNTY OF DALLAS

APPROVED
MR
ATTORNEY

On this 12 day of September, 1991, before me personally appeared MICHAEL LOWENKRON, known to me to be the VICE PRESIDENT of J.C. PENNEY COMPANY, INC., the corporation that executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its Bylaws or a resolution of its Board of Directors.

Beverly A. Wales
Notary Public
Residing at: *Wisco, Texas*

My commission expires: 9-18-94

BEVERLY A. WALES
Notary Public, State of Texas
My Commission Expires 9-18-94



Wales

CONSENT AND SUBORDINATION

PENNOREM ASSOCIATES, a New York limited partnership, as the ground lessee of the real property described as the "Penney Tract" in Part II of Exhibit A to the SECOND AMENDMENT To Construction, Operation and Reciprocal Easement Agreement ("SECOND AMENDMENT") to which this instrument is attached and the owner of the improvements thereon hereby consents to the foregoing SECOND AMENDMENT and agrees that its interests in the Penney Tract and the improvement thereon shall remain subject to and subordinate to the Construction, Operation and Reciprocal Easement Agreement dated October 2, 1971, as amended by the First Amendment to Construction, Operation and Reciprocal Easement Agreement dated January 31, 1973 and by this SECOND AMENDMENT.

DATED 12-9-91, 1991.

PENNOREM ASSOCIATES

By [Signature]
General Partner

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On the 9th day of December, 1991, before me, the undersigned, a Notary Public in and for said State, personally appeared [Signature], personally known to me (or proved to me on the basis of satisfactory evidence) to be the general partner of PENNOREM ASSOCIATES, the general partnership that executed the within instrument, and being first duly sworn acknowledged to me that such partnership executed the same.

WITNESS my hand and official seal.

[Signature]
Notary Public
My Commission Expires: 5-22-98 Residing at [Address]

(SEAL)

(UMAL.CAS1)

[Handwritten initials]

CONSENT AND JOINDER OF FEE OWNER AND
SUBORDINATION OF FEE OWNERSHIP INTEREST

University Mall Shopping Center ("University"), a Utah general partnership, is the fee owner and holder of the landlord's interest with respect to the lease to "Mervyn's" of the real property referred to as the "Mervyn's Tract" and described in Part IV of Exhibit A to the SECOND AMENDMENT to Construction, Operation and Reciprocal Easement Agreement. The Original REA, the First Amendment and the Second Amendment to Construction, Operation and Reciprocal Easement Agreement to which this instrument is attached are referred to below as the "REA".

ENT 3710 BK 2881 PG 858

University, by executing this document, intends to subordinate to the REA University's fee interest with respect to the Mervyn's Tract.

University, as fee owner, hereby subordinates to the REA all of its right, title and interest in and to the Mervyn's Tract. Accordingly, University hereby: (i) consents to all of the terms, covenants, conditions, requirements and restrictions of the REA; (ii) joins in the grant of easements set forth in this REA insofar as they are in, over and upon the Mervyn's Tract; and (iii) agrees that each and all of the terms, covenants and conditions of the REA shall be covenants running with the land, shall bind University and all of its successors and assigns of its fee interest in the Mervyn's Tract and shall bind and inure to the benefit of each Party under the REA, as such term is defined in the REA.

Dated SEPTEMBER 3, 1991.

UNIVERSITY MALL SHOPPING CENTER,

By Wallace R. Woodbury
Wallace R. Woodbury
Attorney in Fact

By Orin R. Woodbury
Orin R. Woodbury
Attorney in Fact

PARTNERSHIP ACKNOWLEDGEMENT

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

On this 3RD day of SEPTEMBER, 1991, before me personally appeared WALLACE R. WOODBURY and ORIN R. WOODBURY, personally known to me to be the attorneys in fact for UNIVERSITY MALL SHOPPING CENTER, the general partnership that executed the within instrument, and being first duly sworn acknowledged to me that such partnership executed the same.

Notary Public
KATHLEEN WALTERS-GAGM
6344 Meadowcrest Road
Salt Lake City, Utah 84121
My Commission Expires
August 6, 1994
State of Utah
My commission expires

Kathleen Walters-Gagm
Notary Public
Residing at: _____

CONSENT AND SUBORDINATION OF TRUST DEED BENEFICIARY

CONNECTICUT GENERAL LIFE INSURANCE COMPANY ("CGLIC"), as the owner and holder of a promissory note dated March 3, 1972, in the principal sum of NINE MILLION ONE HUNDRED THOUSAND DOLLARS (\$9,100,000.00) and of a certain deed of trust of even date therewith securing said note recorded January 2, 1973, Recorder's Entry No. 3, Book 1309, Page 250, Records of the Utah County Recorder, hereby consents to the Second Amendment to Construction, Operation and Reciprocal Easement Agreement to which this instrument is attached and agrees that said deed of trust which is a lien on the real property described as the "Developer Tract" in said Second Amendment, shall be and the same is hereby made subject to and subordinate to said Second Amendment; provided, however, that said subordination shall not effect nor be applicable to and does hereby expressly exclude any additional liens, rights, powers, easements and/or other encumbrances, if any, which may have arisen or intervened in the period between the recording of said deed of trust and the effective date of this Consent and Subordination. This Consent and Subordination shall become effective upon its date of recordation in the records of the Utah County Recorders Office, State of Utah.

Dated: Dec 18, 1991.

CONNECTICUT GENERAL LIFE INSURANCE COMPANY, a Connecticut Corporation

By: CIGNA Investments, Inc., a Delaware corporation

By: [Signature]
Bret E. Meck
Vice President

)
: ss. Bloomfield
)

STATE OF CONNECTICUT

County of Hartford

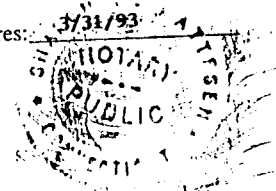
On the 18th day of December, 1991, before me Bret E. Meck, the undersigned officer, personally appeared Bret E. Meck, who being by me first duly sworn did say that he is the Vice President of CIGNA Investments, Inc., a corporation duly authorized to act on behalf of Connecticut General Life Insurance Company, and that he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as such officer.

[Signature]
Notary Public Sharon Mattesen
Residing at: _____

My commission expires: 3/31/93

/UMALL/CIGNA2.SUB

[Handwritten initials]



CONSENT AND SUBORDINATION OF TRUST DEED BENEFICIARY

CONNECTICUT GENERAL LIFE INSURANCE COMPANY ("CGLIC"), as the owner and holder of a promissory note dated May 2, 1973, in the principal sum of THREE MILLION FOUR HUNDRED THIRTY FIVE THOUSAND DOLLARS (\$3,435,000.00) and of a certain deed of trust of even date therewith securing said note recorded April 16, 1973, Recorder's Document No. 7484, Official Records Utah County, Utah, hereby approves of the Second Amendment to Construction, Operation and Reciprocal Easement Agreement to which this instrument is attached and agrees that said deed of trust shall be and the same is hereby made subject and subordinate to said Second Amendment; provided, however, that said subordination shall not effect nor be applicable to and does hereby expressly exclude any additional liens, rights, powers, easements and/or other encumbrances, if any, which may have arisen or intervened in the period between the recording of said deed of trust and the effective date of this Consent and Subordination. This Consent and Subordination shall become effective upon its date of recordation in the Official Records of Utah County, Utah.

Dated: Dec 18, 1991.

CONNECTICUT GENERAL LIFE INSURANCE COMPANY, a Connecticut Corporation

By: CIGNA Investments, Inc., a Delaware corporation

By [Signature]

Bret E. Meck
) Vice President

: ss. Bloomfield
)

STATE OF CONNECTICUT

County of Hartford

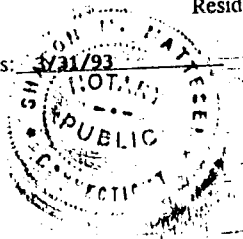
On the 18th day of December, 1991, before me Bret E. Meck, the undersigned officer, personally appeared Bret E. Meck, who being by me first duly sworn did say that he is the Vice President of CIGNA Investments, Inc., a corporation duly authorized to act on behalf of Connecticut General Life Insurance Company, and that he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as such officer.

[Signature]

Notary Public Sharon Mattesen
Residing at: _____

My commission expires: 1/31/93

/UMALL/CIGNA.SUB



[Handwritten initials]

CONSENT AND SUBORDINATION AGREEMENT

The undersigned, THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, a corporation of the State of New York, is the holder and owner of a promissory note dated January 26, 1973, in the original principal amount of \$3,000,000.00, and of a certain mortgage of even date therewith securing such note, which said mortgage was recorded January 29, 1973, in Book 1313 at Page 71, Entry No. 1439, in the office of the County Recorder of Utah County, Utah. As such holder and owner, but subject to the qualifications and limitations expressed in items (1) and (2) below, the undersigned hereby approves the Second Amendment to Construction, Operation, and Reciprocal Easement Agreement to which this document is attached and agrees that said mortgage shall be and the same is hereby made subject and subordinate to said Second Amendment. Notwithstanding the approval and subordination expressed in the foregoing, however, the following shall be the case:

(1) Said subordination shall not apply or extend to, and said mortgage shall not be subject or subordinate to, any lien which may be provided for in, arise pursuant to, or result from said Second Amendment, to the extent that any such lien secures any amount or obligation that accrues or that becomes liquidated, due, or payable at any time prior to sale under foreclosure pursuant to said mortgage; and

(2) It is not the intention of the undersigned through the approval and subordination expressed in the foregoing to approve or to subordinate said mortgage to any liens, rights, powers, easements, and/or encumbrances other than said Second Amendment and the matters provided for therein (and then only with the qualifications and limitations set forth in item (1) above), and if for any reason this document would have the effect of doing so it shall be ineffective for any purpose.

Subject to the foregoing, this Consent and Subordination Agreement shall become effective upon its date of recordation in the office of the County Recorder of Utah County, Utah.

DATED this 22ND day of JANUARY, 1992.

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, a New York corporation



By Rodney A. Wycoff
Title: ATTORNEY IN FACT

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.

The foregoing instrument was acknowledged before me this 22ND day of JANUARY, 1992, by RODNEY A. WYCOFF of THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, a New York corporation.
Attorney-in-Fact

My Commission Expires:
Sept. 20, 1994

Karen M. Vale
Notary Public
Residing at: CORONA DEL MAR, CA

EXHIBIT "A"

ENT 3710 BK 2881 PG 862

PART I - DEVELOPER TRACT:

PARCEL 1

PHASE I - DEVELOPER PARCEL 3

The following described property in Orem City, Utah County, State of Utah, to-wit:

BEGINNING AT A POINT WHICH IS 554.48 FEET NORTH AND 2675.24 FEET WEST FROM THE SOUTHEAST CORNER OF SECTION 23, T6S, R2E, SLB & M:

THENCE SOUTH 18°31' EAST 31.64 FEET;
THENCE SOUTH 88°44' EAST 301.25 FEET;
THENCE NORTH 04°02' EAST 29.77 FEET;
THENCE NORTH 88°43' WEST 115.49 FEET;
THENCE NORTH 88°44' WEST 197.90 FEET;
TO POINT OF BEGINNING.

Area = Approximately 0.210 Acres

PARCEL 2

(LOT 1, PLAT "A")

PHASE I - DEVELOPER PARCEL 1

The following described property in Orem City, Utah County, State of Utah, to-wit:

COMMENCING AT A POINT 30.54 FEET NORTH AND 2499.41 FEET WEST OF THE SOUTHEAST CORNER OF SECTION 23, TOWNSHIP 6 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE SOUTH 18°31' EAST 578.02 FEET; THENCE NORTH 88°35' EAST 524.31 FEET; THENCE NORTH 89°03' EAST 165.00 FEET TO THE TRUE POINT OF BEGINNING AND RUNNING:

THENCE NORTH 00°59' EAST 164.29 FEET;
THENCE NORTH 04°02' EAST 116.43 FEET;
THENCE NORTH 85°58' WEST 284.07 FEET;
THENCE NORTH 04°02' EAST 460.00 FEET;
THENCE SOUTH 85°58' EAST 56.57 FEET;
THENCE NORTH 04°02' EAST 283.22 FEET;
THENCE SOUTH 88°55' EAST 467.95 FEET;
THENCE NORTH 00°33' WEST 149.49 FEET;
THENCE NORTH 89°25' WEST 79.84 FEET;
THENCE NORTH 00°32' EAST 31.81 FEET;
THENCE SOUTH 85°58' EAST 212.05 FEET;
THENCE SOUTH 04°02' WEST 90.00 FEET;
THENCE NORTH 85°58' WEST 15.00 FEET;
THENCE SOUTH 04°02' WEST 427.00 FEET;
THENCE SOUTH 85°58' EAST 213.95 FEET;
TO THE J.C. PENNEY PROPERTY LINE;
THENCE SOUTH 04°02' WEST 437.25 FEET;
TO THE PROPERTY LINE OF UNIVERSITY
MALL SHOPPING CENTER;
THENCE SOUTH 85°58' EAST 7.39 FEET;
THENCE SOUTH 04°02' WEST 284.12 FEET;
THENCE NORTH 79°32' WEST 130.04 FEET;
THENCE NORTH 82°08' WEST 133.89 FEET;
THENCE NORTH 84°43' WEST 50.43 FEET;
THENCE NORTH 86°42' WEST 80.06 FEET;
THENCE NORTH 88°46' WEST 136.38 FEET;
THENCE SOUTH 89°03' WEST 26.51 FEET;
TO THE TRUE POINT OF BEGINNING.

Area = Approximately 16.726 Acres

W. R. [Signature]

PARCEL 3

(LOT 2, PLAT "A")

The following described property in Orem City, Utah County, State of Utah to wit: ENT 3710 BK 2881 PG 863

BEGINNING AT A POINT WHICH IS NORTH 89°18' WEST ALONG THIS SECTION LINE 496.02 FEET AND NORTH 295.68 FEET FROM THE SOUTHEAST CORNER OF SECTION 23, TOWNSHIP 6 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN.

THENCE NORTH 00°13' WEST 199.32 FEET;
THENCE SOUTH 89°18' EAST 46.70 FEET;
THENCE NORTH 00°13' WEST 330.00 FEET;
THENCE NORTH 89°18' WEST 46.20 FEET;
THENCE NORTH 00°13' WEST 39.71 FEET;
THENCE NORTH 85°58' WEST 210.56 FEET;
THENCE SOUTH 04°02' WEST 272.78 FEET;
THENCE NORTH 85°58' WEST 138.00 FEET;
THENCE SOUTH 04°02' WEST 72.00 FEET;
THENCE NORTH 85°58' WEST 15.00 FEET;
THENCE SOUTH 04°02' WEST 374.24 FEET;
TO THE J.C. PENNEY PROPERTY LINE;
THENCE SOUTH 85°58' EAST 24.12 FEET;
THENCE NORTH 04°02' EAST 151.52 FEET;
THENCE SOUTH 85°58' EAST 381.12 FEET;
TO POINT OF BEGINNING.

Area = Approximately 4.460 Acres

PARCEL 5

The following described property in Orem City, Utah County, State of Utah, to-wit:

(NORTH PART OF LOT 5, PLAT "A" - PHASE 2 PORTION)

The following described property in Orem City, Utah County, State of Utah to wit:

BEGINNING AT A POINT WHICH IS NORTH 89°18' WEST ALONG THE SECTION LINE 497.67 FEET AND NORTH 864.67 FEET FROM THE SOUTHEAST CORNER OF SECTION 23, TOWNSHIP 6 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN.

THENCE NORTH 00°13' WEST 292.15 FEET;
THENCE SOUTH 89°18' EAST 141.68 FEET;
TO THE WEST LINE OF 750 EAST STREET;
THENCE NORTH 00°30' WEST 189.88 FEET;
THENCE NORTH 89°11' WEST 15.00 FEET;
THENCE NORTH 00°30' WEST 80.09 FEET;
THENCE NORTH 89°16' WEST 20.00 FEET;
THENCE NORTH 00°30' WEST 78.00 FEET;
THENCE SOUTH 86°09'05" WEST 15.49 FEET;
THENCE NORTH 00°25'56" WEST 148.93 FEET;
THENCE SOUTH 89°43'11" WEST 88.72 FEET;
THENCE NORTH 213.12 FEET TO THE SOUTH LINE OF
THAT PROPERTY KNOWN AS THE KEITH S. JEPSON
AND COZETTE S. JEPSON PROPERTY;
THENCE NORTH 89°41' WEST 197.60 FEET;
THENCE SOUTH 157.14 FEET;
THENCE SOUTH 49°02' WEST 344.33 FEET;
THENCE SOUTH 04°02' WEST 189.50 FEET;
THENCE NORTH 85°58' WEST 192.97 FEET;
THENCE NORTH 50°00' WEST 61.00 FEET;
THENCE NORTH 85°58' WEST 187.65 FEET;
THENCE SOUTH 00°32' WEST 284.36 FEET;
THENCE SOUTH 85°58' EAST 674.75 FEET;
THENCE SOUTH 04°02' WEST 146.22 FEET;
THENCE SOUTH 85°58' EAST 240.56 FEET;
TO TRUE POINT OF BEGINNING.

Area = Approximately 12.05 Acres

PARCEL 6

ENT 3710 BK 2881 PG 864

RIGHT-OF-WAY EASEMENT

A right-of-way for egress and ingress over the following described property in Orem City, Utah County State of Utah to-wit:

COMMENCING AT A POINT WHICH IS NORTH 89°18' WEST ALONG THE SECTION LINE 497.67 FEET AND NORTH 864.67 FEET FROM THE SOUTHEAST CORNER OF SECTION 23, TOWNSHIP 6 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE NORTH 00°13' WEST 292.15 FEET; THENCE SOUTH 89°18' EAST 141.68 FEET; THENCE NORTH 00°30' WEST 189.88 FEET; THENCE NORTH 89°11' WEST 15.00 FEET; THENCE NORTH 00°30' WEST 80.09 FEET; THENCE NORTH 89°16' WEST 20.00 FEET; THENCE NORTH 00°30' WEST 78.00 FEET; THENCE SOUTH 86°09'05" WEST 15.49 FEET; THENCE NORTH 00°25'56" WEST 148.93 FEET; THENCE SOUTH 89°43'11" WEST 88.72 FEET; THENCE NORTH 213.12 FEET; THENCE NORTH 89°41' WEST 197.60 FEET TO THE TRUE POINT OF BEGINNING.

THENCE SOUTH 89°41' EAST 30.00 FEET;
THENCE NORTH 00°18' WEST 146.88 FEET;
THENCE NORTH 00°32' EAST 338.70 FEET;
THENCE NORTH 00°56'20" EAST 226.47 FEET;
TO SOUTH BOUNDARY OF 800 SOUTH STREET;
THENCE WEST 25.00 FEET;
THENCE SOUTH 00°43'23" WEST 267.10 FEET;
THENCE SOUTH 89°37' WEST 7.72 FEET;
TO A POINT NORTH OF THE TRUE POINT OF BEGINNING;
THENCE SOUTH 444.71 FEET TO TRUE POINT OF BEGINNING.

UNIVERSITY MALL SHOPPING CENTER RESERVES THE UNILATERAL RIGHT TO RELOCATE SUCH RIGHT OF WAY FROM TIME TO TIME SO LONG AS A REASONABLE EGRESS AND INGRESS ROUTE BETWEEN SHOPPING CENTER AND 800 SOUTH STREET BE PROVIDED.

PARCEL 8

SOUTH PART OF LOT 5 PLAT "A" - PHASE 1 PORTION

The following described property in Orem City, Utah County, State of Utah, to-wit:

BEGINNING AT A POINT WHICH IS NORTH 89°18' WEST ALONG THE SECTION LINE 1198.75 FEET, AND NORTH 589.99 FEET FROM THE SOUTHEAST CORNER OF SECTION 23, TOWNSHIP 6 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN; (WHICH POINT OF BEGINNING IS ALSO THE NORTHWEST CORNER OF UNIVERSITY MALL SHOPPING CENTER'S PHASE II BUILDING):

THENCE NORTH 85°58' WEST 15.00 FEET;
THENCE SOUTH 04°02' WEST 427.00 FEET;
THENCE SOUTH 85°58' EAST 213.95 FEET;
TO THE J.C. PENNEY PROPERTY LINE;
THENCE NORTH 04°02' EAST 22.74 FEET;
TO THE NORTHWEST CORNER OF THE
J.C. PENNEY PROPERTY LINE;
THENCE SOUTH 85°58' EAST 118.07 FEET;
THENCE NORTH 04°02' EAST 374.24 FEET;
THENCE SOUTH 85°58' EAST 15.00 FEET;
THENCE NORTH 04°02' EAST 72.00 FEET;
THENCE SOUTH 85°58' EAST 138.00 FEET;
THENCE NORTH 04°02' EAST 272.78 FEET;
THENCE NORTH 85°58' WEST 30.00 FEET;
THENCE SOUTH 04°02' WEST 242.78 FEET;
THENCE NORTH 85°58' WEST 138.00 FEET;
THENCE SOUTH 04°02' WEST 72.00 FEET;
THENCE NORTH 85°58' WEST 302.00 FEET;
TO POINT OF BEGINNING.

Area = Approximately 3.515 Acres

PARCEL 9

NORTHWEST OF LOT 5 - PHASE II PORTION

BEGINNING AT A POINT WHICH IS NORTH 89°18'00"
WEST ALONG THE SECTION LINE 998.04 FEET AND
NORTH 1675.06 FEET FROM THE SOUTHEAST CORNER
OF SECTION 23, TOWNSHIP 6 SOUTH, RANGE 2 EAST
OF THE SALT LAKE BASE & MERIDIAN; THENCE EAST
269.02 FEET; THENCE SOUTH 49°02'00" WEST 303.35
FEET; THENCE SOUTH 04°02'00" WEST 189.50 FEET;
THENCE NORTH 85°58'00" WEST 40.03 FEET; THENCE
NORTH 04°02'03" EAST 188.85 FEET; THENCE NORTH
196.72 FEET TO THE POINT OF BEGINNING. AREA =
38,258.75 FEET OR 0.08783 ACRE.

ENT 3710 BK 2881 PG 865

SC-1 (SC-1)

The following described property in Orem City, Utah County, State
of Utah, to-wit:

BEGINNING AT A POINT WHICH IS 32.62 FEET SOUTH AND 359.98
FEET WEST FROM THE SOUTHEAST CORNER OF SECTION 23, T6S, R2E,
SLB & M:

THENCE SOUTH 00°39' EAST 638.53 FEET;
THENCE SOUTH 88°52' EAST 77.96 FEET;
THENCE NORTH 89°14' EAST 109.00 FEET;
THENCE NORTH 00°46' WEST 90.00 FEET;
THENCE SOUTH 89°14' WEST 9.00 FEET;
THENCE NORTH 00°46' WEST 95.00 FEET;
THENCE SOUTH 89°14' WEST 100.00 FEET;
THENCE NORTH 00°46' WEST 454.15 FEET;
THENCE NORTH 89°18' WEST 76.64 FEET
TO POINT OF BEGINNING.

Area = Approximately 1.576 Acres

PARCEL D

The following described property in Orem City, Utah County, State
of Utah, to-wit:

BEGINNING AT A POINT 510.98 FEET SOUTH AND 463.34 FEET WEST
FROM THE NORTH 1/4 CORNER OF SECTION 23, T6S, R2E, SLB & M:

THENCE NORTH 00°29' WEST 150.94 FEET;
THENCE NORTH 89°35' WEST 29.18 FEET;
THENCE NORTH 00°32' EAST 56.15 FEET;
THENCE SOUTH 89°27' WEST 117.55 FEET;
THENCE SOUTH 00°42' WEST 202.79 FEET;
THENCE SOUTH 88°43' EAST 150.00 FEET
TO POINT OF BEGINNING.

Area = Approximately 0.659 Acres

DEVELOPER TRACT AREA = APPROXIMATELY 40.0743 ACRES
(Exclusive of PARCEL 6 RIGHT OF WAY EASEMENT)

EXHIBIT "A"

PART II

PENNEY TRACT

BEGINNING AT A POINT WHICH IS 540.00 FEET ALONG THE SECTION
LINE BEARING NORTH 89°18' WEST AND 25.00 FEET NORTH FROM
THE SOUTHEAST CORNER OF SECTION 23, T6S, R2E, SLB&M

THENCE NORTH 00°13' WEST 140.00 FEET;
THENCE SOUTH 89°18' EAST 45.00 FEET;
THENCE NORTH 00°13' WEST 130.68 FEET;
THENCE NORTH 85°58' WEST 381.12 FEET;
THENCE SOUTH 04°02' WEST 151.52 FEET;
THENCE NORTH 85°58' WEST 142.17 FEET;
THENCE SOUTH 04°02' WEST 460.00 FEET;
THENCE SOUTH 85°58' EAST 7.39 FEET;
THENCE SOUTH 04°02' WEST 284.12 FEET;
THENCE SOUTH 79°32' EAST 28.67 FEET;
THENCE SOUTH 78°11' EAST 115.50 FEET;
THENCE SOUTH 78°00' EAST 79.29 FEET;
THENCE SOUTH 78°32' EAST 224.66 FEET;
THENCE SOUTH 81°56' EAST 166.63 FEET;
THENCE SOUTH 88°52' EAST 116.93 FEET;
THENCE NORTH 00°39' EAST 638.53 FEET;
THENCE NORTH 89°18' WEST 180.00 FEET;
THENCE NORTH 62.00 FEET TO THE POINT
OF BEGINNING.
AREA = 13.200 ACRES.

WP

EXHIBIT "A"

ENT 3710 BK 2881 PG 867

PART III

ZCMI TRACT

BEGINNING AT A POINT 30.54 FEET NORTH AND 2499.41 FEET
WEST OF THE SOUTHEAST CORNER OF SECTION 23, T6S, R2E, SLB 8 M;

THENCE SOUTH 18°31' EAST 578.02 FEET;
THENCE NORTH 88°35' EAST 524.31 FEET;
THENCE NORTH 89°03' EAST 165.00 FEET;
THENCE NORTH 0°59' EAST 164.29 FEET;
THENCE NORTH 4°02' EAST 116.43 FEET;
THENCE NORTH 85°58' WEST 284.07 FEET;
THENCE NORTH 4°02' EAST 460.00 FEET;
THENCE SOUTH 85°58' EAST 56.57 FEET;
THENCE NORTH 4°02' EAST 283.22 FEET;
THENCE NORTH 88°55' WEST 389.32 FEET;
THENCE NORTH 88°43' WEST 181.96 FEET;
THENCE SOUTH 4°02' WEST 29.77 FEET;
THENCE NORTH 88°44' WEST 301.25 FEET;
THENCE SOUTH 18°31' EAST 31.64 FEET;
THENCE SOUTH 88°44' EAST 289.09 FEET;
THENCE SOUTH 4°02' WEST 190.68 FEET;
THENCE NORTH 85°58' WEST 90.83 FEET;
THENCE SOUTH 71°29' WEST 115.00 FEET;
THENCE SOUTH 18°31' EAST 250.00 FEET
TO POINT OF BEGINNING.
AREA = 15.796 ACRES

(Handwritten initials)

PART IV - MERVYN'S TRACT:

(LOTS 3 AND 4, PLAT "A")

The following described property in Orem City, Utah County, State of Utah, to-wit:

BEGINNING AT A POINT WHICH IS NORTH 89°18' WEST ALONG THE SECTION LINE 1198.75 FEET, AND NORTH 589.99 FEET FROM THE SOUTHEAST CORNER OF SECTION 23, TOWNSHIP 6 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN.

THENCE NORTH 04°02' EAST 90.00 FEET;
THENCE NORTH 85°58' WEST 212.05 FEET;
THENCE NORTH 00°32' EAST 371.68 FEET;
THENCE SOUTH 85°58' EAST 674.75 FEET;
THENCE SOUTH 04°02' WEST 389.00 FEET;
THENCE NORTH 85°58' WEST 138.00 FEET;
THENCE SOUTH 04°02' WEST 72.00 FEET;
THENCE NORTH 85°58' WEST 302.00 FEET;
TO THE POINT OF BEGINNING.

Area = Approximately 6.331 Acres

(Handwritten signature)

PART V SHOPPING CENTER SITE

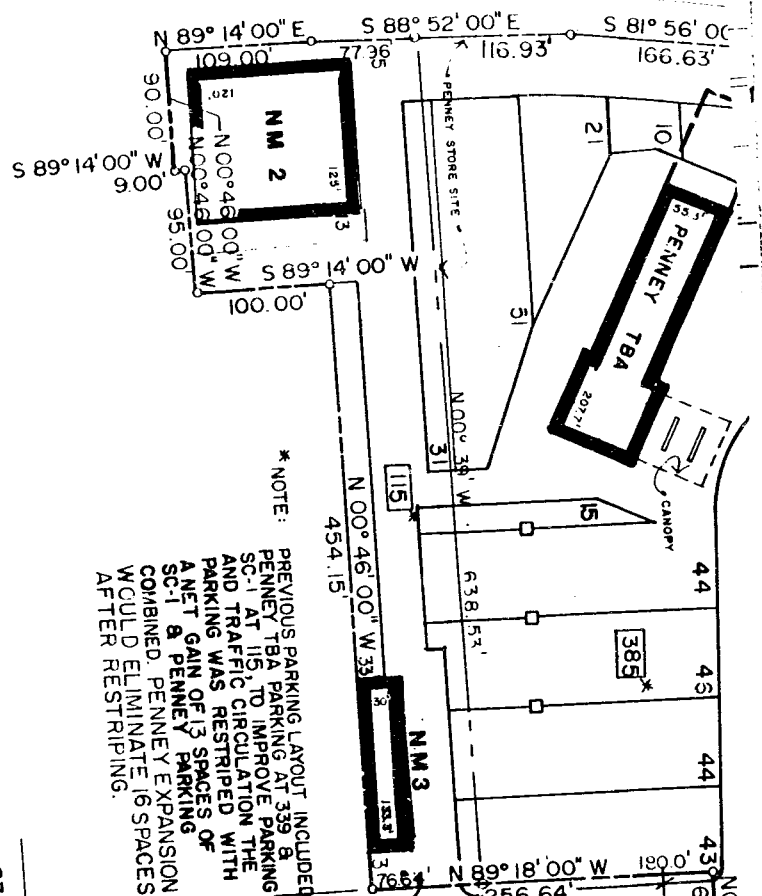
TOTAL PROPERTY DESCRIPTION

The following described property in Orem City, Utah County, State of Utah, to-wit:

ENT 3710 BK 2881 PG 869

BEGINNING AT A POINT WHICH IS 540.00 FEET ALONG THE SECTION LINE BEARING NORTH 89°18' WEST AND 25.00 FEET NORTH FROM THE SOUTHEAST CORNER OF SECTION 23, T6S, R2E, SLB&M:

THENCE NORTH 00°13' WEST 140.00 FEET;
THENCE SOUTH 89°18' EAST 45.00 FEET;
THENCE NORTH 00°13' WEST 330.00 FEET;
THENCE SOUTH 89°18' EAST 46.70 FEET;
THENCE NORTH 00°13' WEST 330.00 FEET;
THENCE SOUTH 89°18' EAST 46.20 FEET;
THENCE NORTH 00°13' WEST 331.86 FEET;
THENCE SOUTH 89°18' EAST 141.68 FEET;
TO THE WEST LINE OF 750 EAST STREET;
THENCE NORTH 00°30' WEST 189.88 FEET;
THENCE NORTH 89°11' WEST 15.00 FEET;
THENCE NORTH 00°30' WEST 80.09 FEET;
THENCE NORTH 89°16' WEST 20.00 FEET;
THENCE NORTH 00°30' WEST 78.00 FEET;
THENCE SOUTH 86°09'05" WEST 15.49 FEET;
THENCE NORTH 00°25'56" WEST 148.93 FEET;
THENCE SOUTH 89°43'11" WEST 88.72 FEET;
THENCE NORTH 213.12 FEET TO THE SOUTH LINE OF
THAT PROPERTY KNOWN AS THE KEITH S. JEPSSON
AND COZETTE S. JEPSSON PROPERTY;
THENCE NORTH 89°41' WEST 197.60 FEET;
THENCE SOUTH 157.14 FEET;
THENCE SOUTH 49°02'00" WEST 40.98 FEET;
THENCE WEST 269.02 FEET;
THENCE SOUTH 196.72 FEET;
THENCE SOUTH 04°02'03" WEST 188.85 FEET;
THENCE NORTH 85°58'00" WEST 152.97 FEET;
THENCE NORTH 50°00' WEST 61.00 FEET;
THENCE NORTH 85°58' WEST 187.65 FEET;
THENCE SOUTH 00°32' WEST 687.85 FEET;
THENCE SOUTH 89°25' EAST 79.84 FEET;
THENCE SOUTH 00°33' EAST 149.49 FEET;
THENCE NORTH 88°55' WEST 857.27 FEET;
THENCE NORTH 00°29' WEST 150.94 FEET;
THENCE NORTH 89°35' WEST 29.18 FEET;
THENCE NORTH 00°32' EAST 56.15 FEET;
THENCE SOUTH 89°27' WEST 117.55 FEET;
THENCE SOUTH 00°42' WEST 202.79 FEET;
THENCE NORTH 88°43' WEST 147.45 FEET;
THENCE NORTH 88°44' WEST 197.90 FEET;
THENCE SOUTH 18°31' EAST 63.28 FEET;
THENCE SOUTH 88°44' EAST 289.09 FEET;
THENCE SOUTH 04°02' WEST 190.68 FEET;
THENCE NORTH 85°58' WEST 90.83 FEET;
THENCE SOUTH 71°29' WEST 115.00 FEET;
THENCE SOUTH 18°31' EAST 828.02 FEET;
THENCE NORTH 88°35' EAST 524.31 FEET;
THENCE NORTH 89°03' EAST 191.51 FEET;
THENCE SOUTH 88°46' EAST 136.38 FEET;
THENCE SOUTH 86°42' EAST 80.06 FEET;
THENCE SOUTH 84°43' EAST 50.43 FEET;
THENCE SOUTH 82°08' EAST 133.89 FEET;
THENCE SOUTH 79°32' EAST 158.71 FEET;
THENCE SOUTH 78°11' EAST 115.50 FEET;
THENCE SOUTH 78°00' EAST 79.29 FEET;
THENCE SOUTH 78°32' EAST 224.66 FEET;
THENCE SOUTH 81°56' EAST 166.63 FEET;
THENCE SOUTH 88°52' EAST 194.89 FEET;
THENCE NORTH 89°14' EAST 109.00 FEET;
THENCE NORTH 00°46' WEST 90.00 FEET;
THENCE SOUTH 89°14' WEST 9.00 FEET;
THENCE NORTH 00°46' WEST 95.00 FEET;
THENCE SOUTH 89°14' WEST 100.00 FEET;
THENCE NORTH 00°46' WEST 454.15 FEET;
THENCE NORTH 89°18' WEST 256.64 FEET;
THENCE NORTH 62.00 FEET;
TO THE POINT OF BEGINNING.



* NOTE: PREVIOUS PARKING LAYOUT INCLUDED PENNEY TBA PARKING AT 339 & SC-1 AT 115, TO IMPROVE PARKING AND TRAFFIC CIRCULATION THE PARKING WAS RESTRIPEDED A NET GAIN OF 13 SPACES OF SC-1 & PENNEY PARKING COMBINED. PENNEY EXPANSION WOULD ELIMINATE 16 SPACES AFTER RESTRIPEDED.

S.E. COR. SEC. 23
T.6S. R.2E. SLB. 8 M.

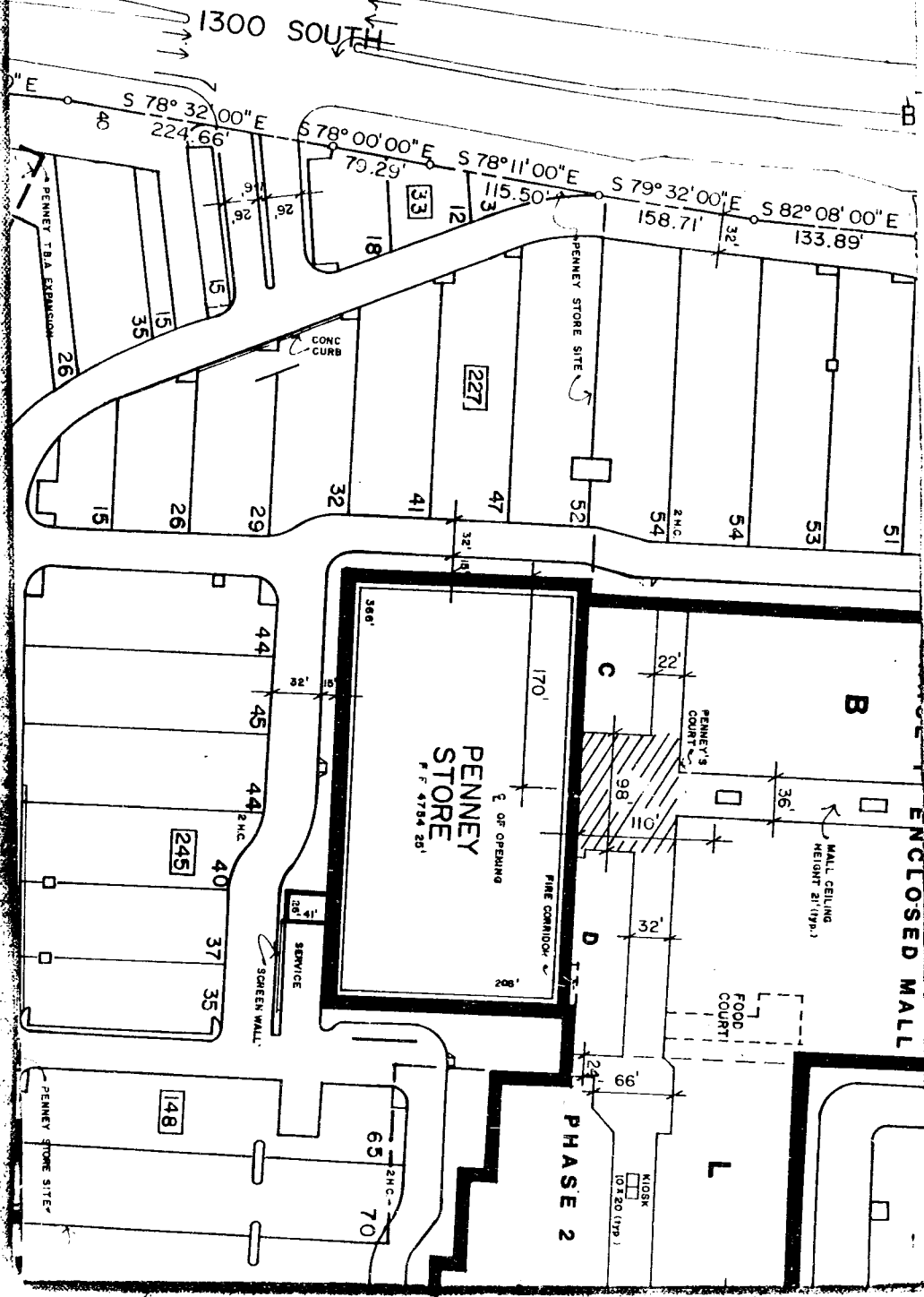
1200 SOUTH STREET

NORTH 800 EAST STREET

NOTES

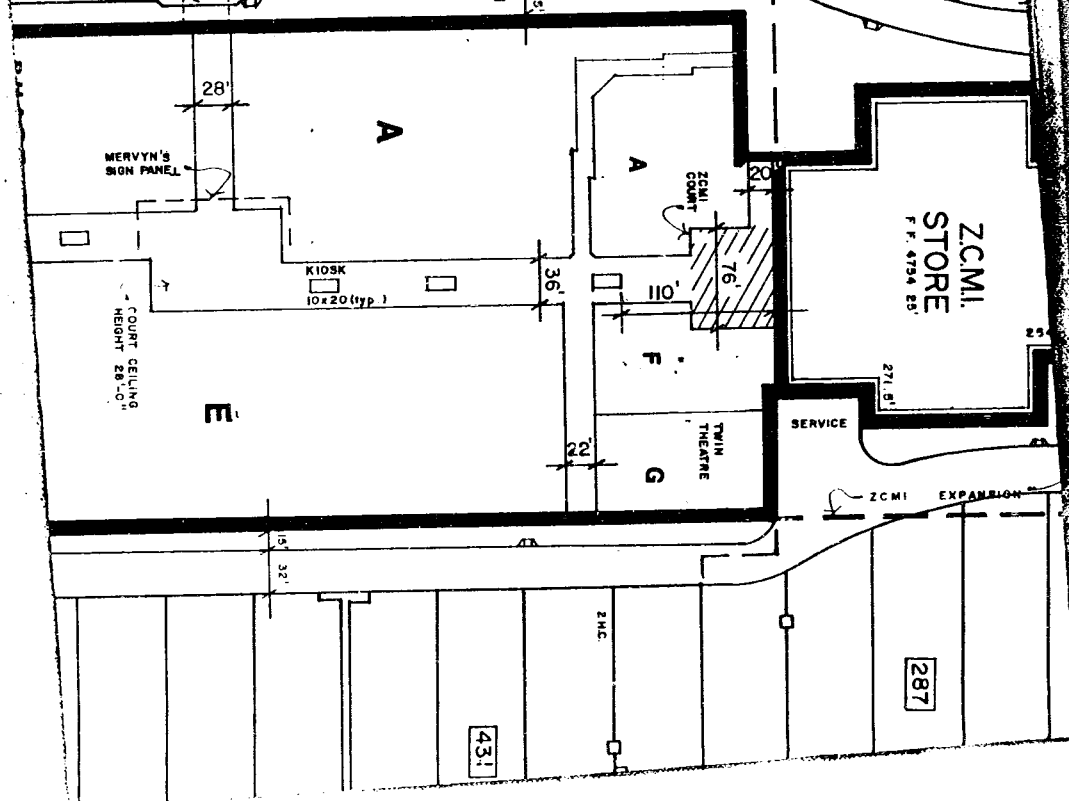
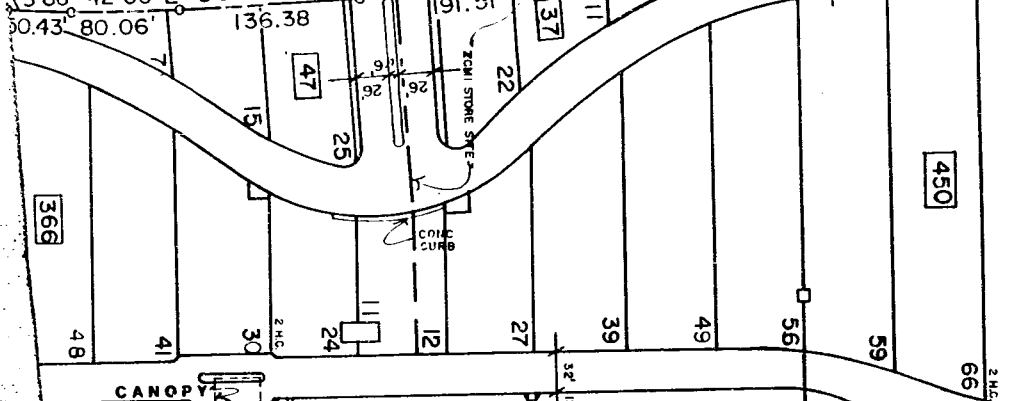
90° PARKING STAND LAYOUT AT 9-0-00 & MERVINS FACTS ON PENNEY & ZCH ALL BAY WIDTHS ARE 65'

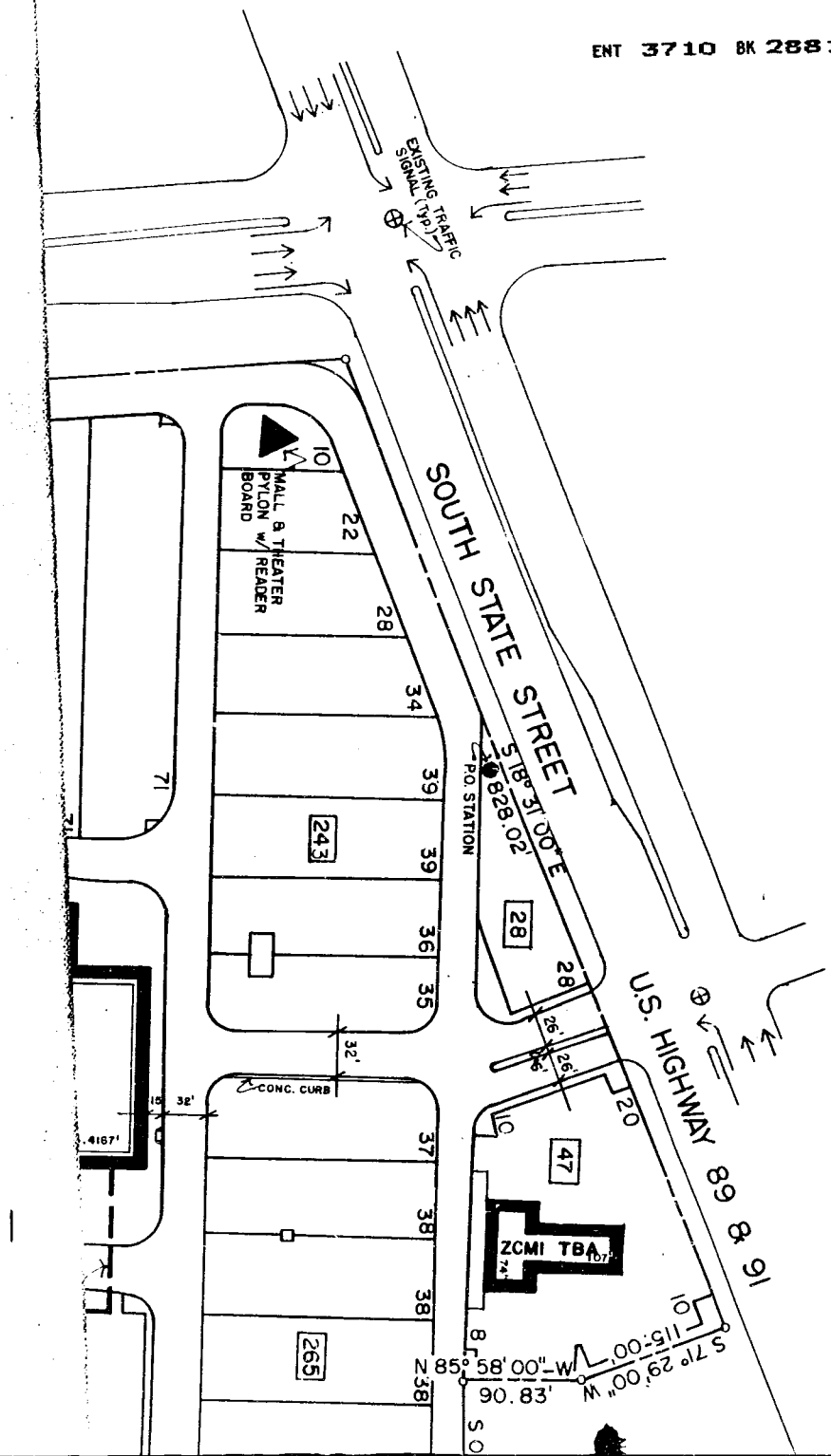
NORTH N 00° 13' 00" W
62.00' POB 140.00'
S 89° 18' 00" E
45.00'
N 00° 13' 00" W
330.00'



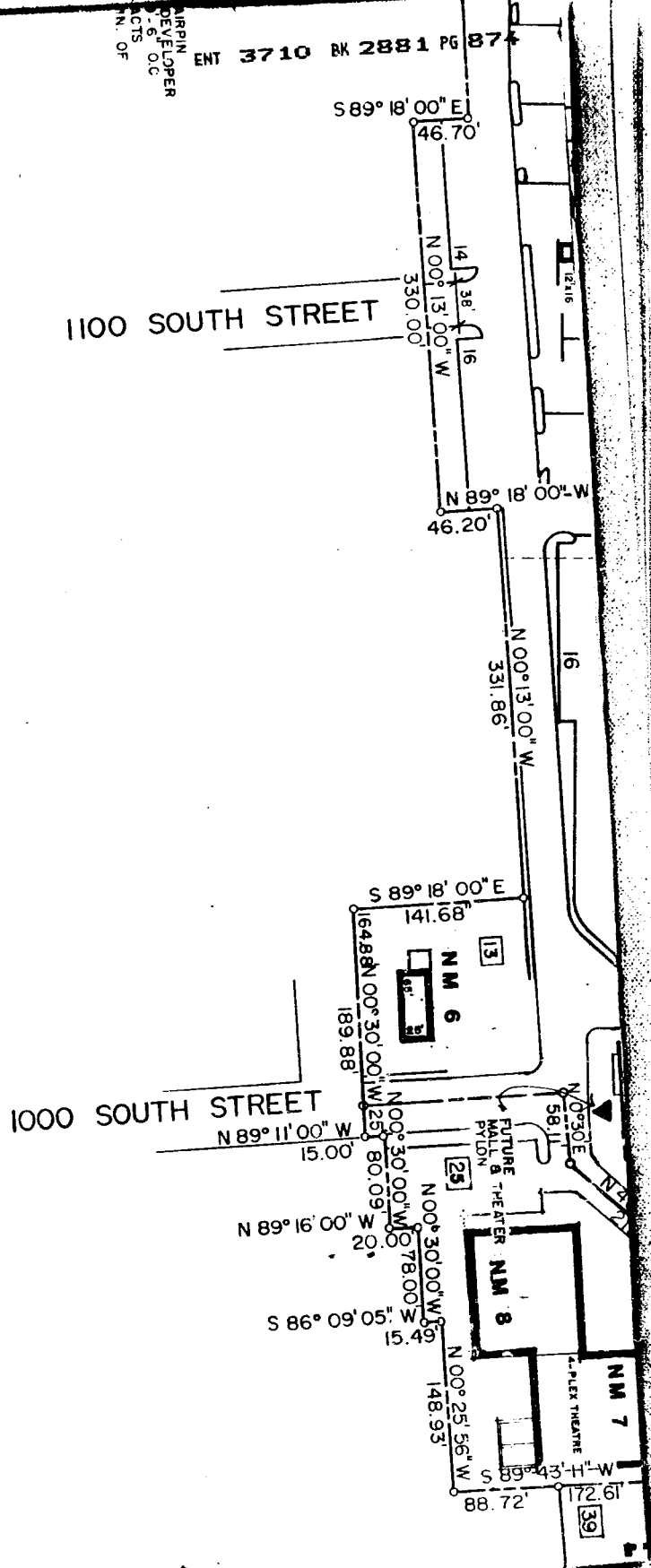
Y.U. DIAGONAL

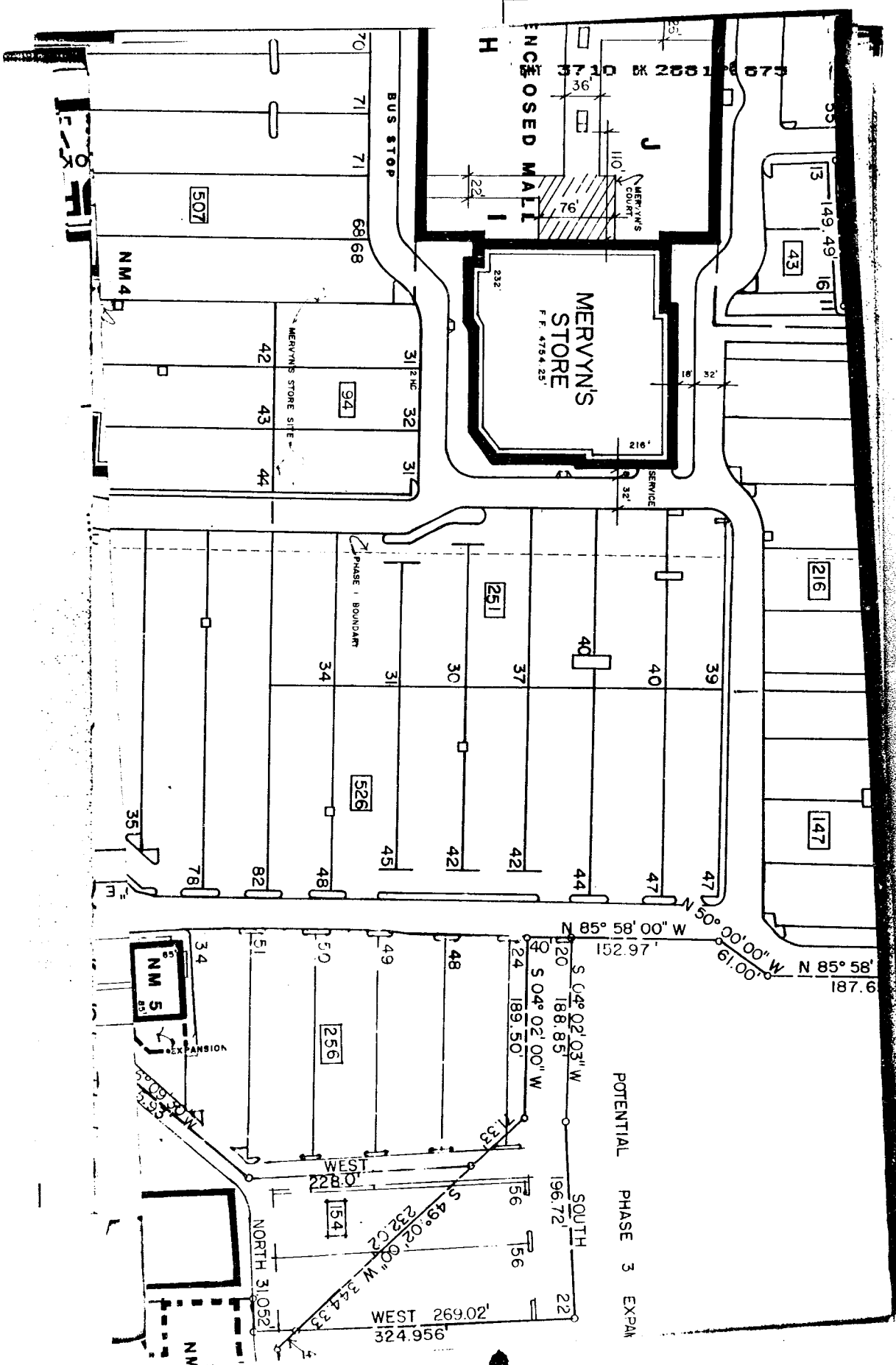
$S 84^{\circ} 43' 00'' E$
 $S 86^{\circ} 42' 00'' E$
 $S 88^{\circ} 46' 00'' E$
 $N 89^{\circ} 03' 00'' E$
 $N 88^{\circ} 35' 00'' E$





SITE PLAN





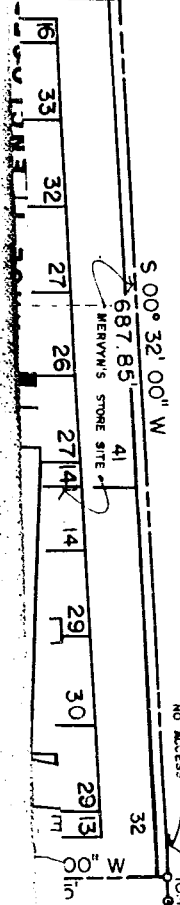
62	60	56	50	52	52	53	54	54	55	56
----	----	----	----	----	----	----	----	----	----	----

N 88° 55' 00" W
857.27'

ENT 3710 BK 2881 PG 876

S 00° 33' 00" E

S 89° 25' 00" E
79.84'



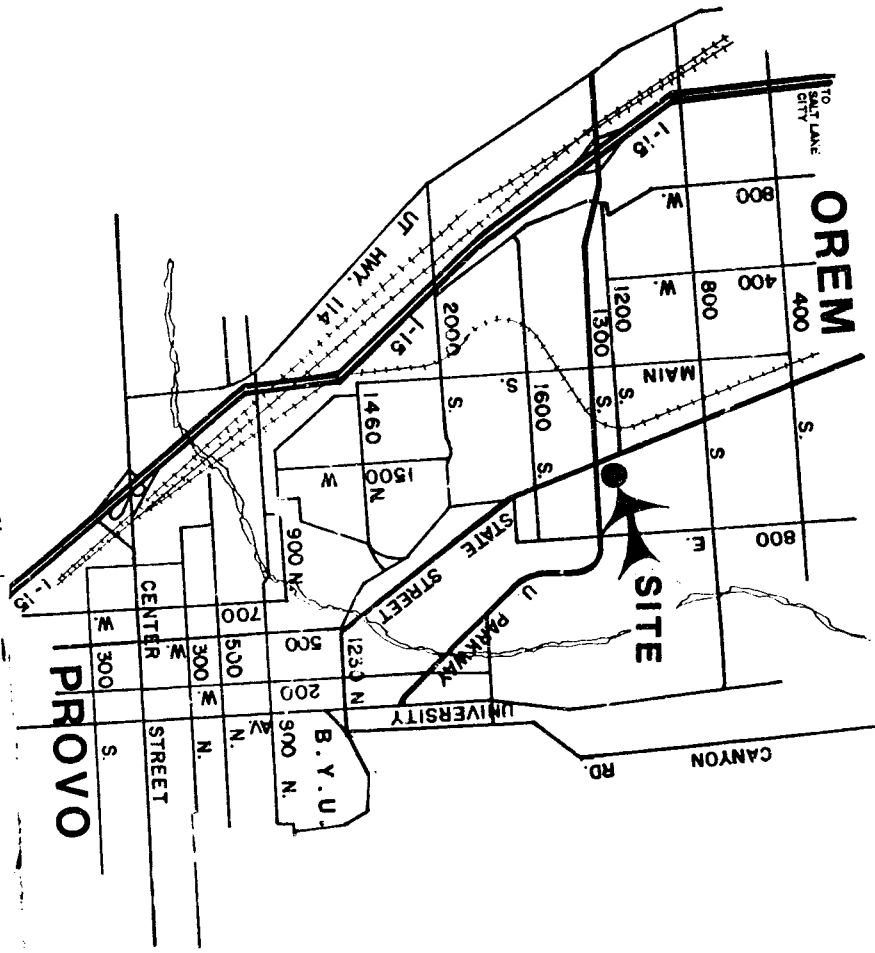
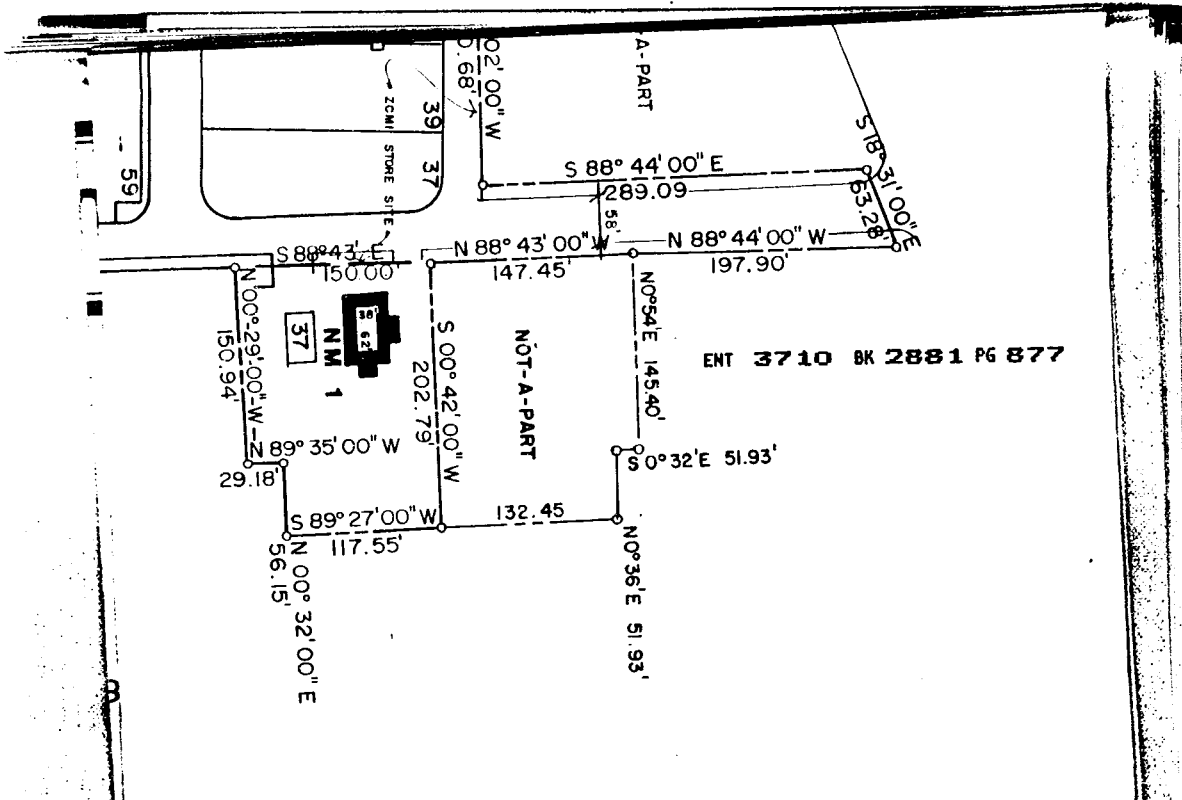
1000 SOUTH STREET

C-11984
R-20842
C-2703
R-25942
S 32° 28' 12" W
37.34'

S 00° 16' E

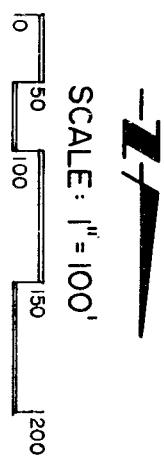
VICINITY MAP
Orem/Provo, Utah

NO SCALE



21312
NORTH 21
16
N

ENT 3710 BK 2881 PG 878

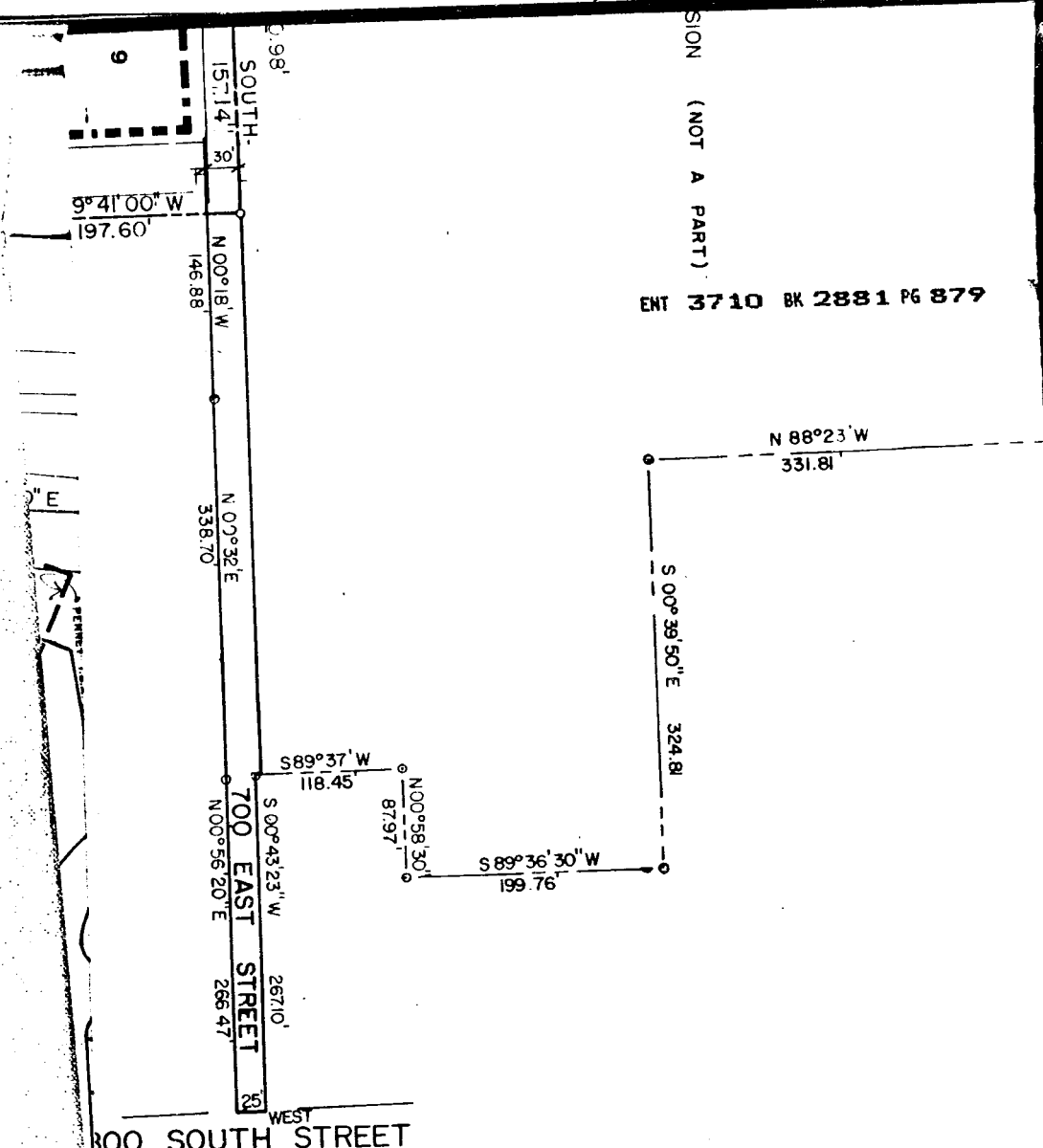


SCALE: 1" = 100'

EXHIBIT B-1

SION (NOT A PART)

ENT 3710 BK 2881 PG 879



UNIVERSITY MALL , OREM

TOTALS		ZONING	PERMIT	DEVELOPER	DEVELOPER/NEIGH					
SPACES RATIO		SPACES RATIO	SPACES RATIO	SPACES RATIO	SPACES RATIO					
PARKING:										
AFter PHASE I	4669	7.927	1357	8.039	991	6.075	2321	8.867	...	...
AFter PHASE II	5468	6.548	1357	8.039	991	6.075	2321	8.867	561	6.177
AFter FUTURE EXPAN	5413	5.914	1318	5.776	975	6.828	2359	6.206	561	6.177
Width @ 9.0'	5512	6.022	1370	6.003	1022	6.109	2375	6.206	561	6.177
Needed	5494	6.002	1370**	6.003	1004**	6.100	2375	6.002	545	6.001
SITE ACRES:										
AFter PHASE I	57.995		15.796		13.207		28.992		...	...
AFter PHASE II	75.408		15.796		13.207		40.074		...	6.331
** DEVELOPER CAN ADD ADDITIONAL PARKING WHEN WM-9 IS ERRECTED										
** MUST RESTRIIVE TO ACHIEVE										

TOTALS		ZONING	PERMIT	DEVELOPER	DEVELOPER/NEIGH					
SPACES RATIO		SPACES RATIO	SPACES RATIO	SPACES RATIO	SPACES RATIO					
PARKING:										
AFter PHASE I	4669	7.927	1357	8.039	991	6.075	2321	8.867	...	...
AFter PHASE II	5468	6.548	1357	8.039	991	6.075	2321	8.867	561	6.177
AFter FUTURE EXPAN	5413	5.914	1318	5.776	975	6.828	2359	6.206	561	6.177
Width @ 9.0'	5512	6.022	1370	6.003	1022	6.109	2375	6.206	561	6.177
Needed	5494	6.002	1370**	6.003	1004**	6.100	2375	6.002	545	6.001
SITE ACRES:										
AFter PHASE I	57.995		15.796		13.207		28.992		...	...
AFter PHASE II	75.408		15.796		13.207		40.074		...	6.331
** DEVELOPER CAN ADD ADDITIONAL PARKING WHEN WM-9 IS ERRECTED										
** MUST RESTRIIVE TO ACHIEVE										

TOTALS		ZONING	PERMIT	DEVELOPER	DEVELOPER/NEIGH					
SPACES RATIO		SPACES RATIO	SPACES RATIO	SPACES RATIO	SPACES RATIO					
PARKING:										
AFter PHASE I	4669	7.927	1357	8.039	991	6.075	2321	8.867	...	...
AFter PHASE II	5468	6.548	1357	8.039	991	6.075	2321	8.867	561	6.177
AFter FUTURE EXPAN	5413	5.914	1318	5.776	975	6.828	2359	6.206	561	6.177
Width @ 9.0'	5512	6.022	1370	6.003	1022	6.109	2375	6.206	561	6.177
Needed	5494	6.002	1370**	6.003	1004**	6.100	2375	6.002	545	6.001
SITE ACRES:										
AFter PHASE I	57.995		15.796		13.207		28.992		...	...
AFter PHASE II	75.408		15.796		13.207		40.074		...	6.331
** DEVELOPER CAN ADD ADDITIONAL PARKING WHEN WM-9 IS ERRECTED										
** MUST RESTRIIVE TO ACHIEVE										

TOTALS		ZONING	PERMIT	DEVELOPER	DEVELOPER/NEIGH					
SPACES RATIO		SPACES RATIO	SPACES RATIO	SPACES RATIO	SPACES RATIO					
PARKING:										
AFter PHASE I	4669	7.927	1357	8.039	991	6.075	2321	8.867	...	...
AFter PHASE II	5468	6.548	1357	8.039	991	6.075	2321	8.867	561	6.177
AFter FUTURE EXPAN	5413	5.914	1318	5.776	975	6.828	2359	6.206	561	6.177
Width @ 9.0'	5512	6.022	1370	6.003	1022	6.109	2375	6.206	561	6.177
Needed	5494	6.002	1370**	6.003	1004**	6.100	2375	6.002	545	6.001
SITE ACRES:										
AFter PHASE I	57.995		15.796		13.207		28.992		...	...
AFter PHASE II	75.408		15.796		13.207		40.074		...	6.331
** DEVELOPER CAN ADD ADDITIONAL PARKING WHEN WM-9 IS ERRECTED										
** MUST RESTRIIVE TO ACHIEVE										

WOODBUFF
 MANAGERS / BROK
 LYNN S. V
 Salt L

2677 East Parlays Way

UTAH

SITE DATA

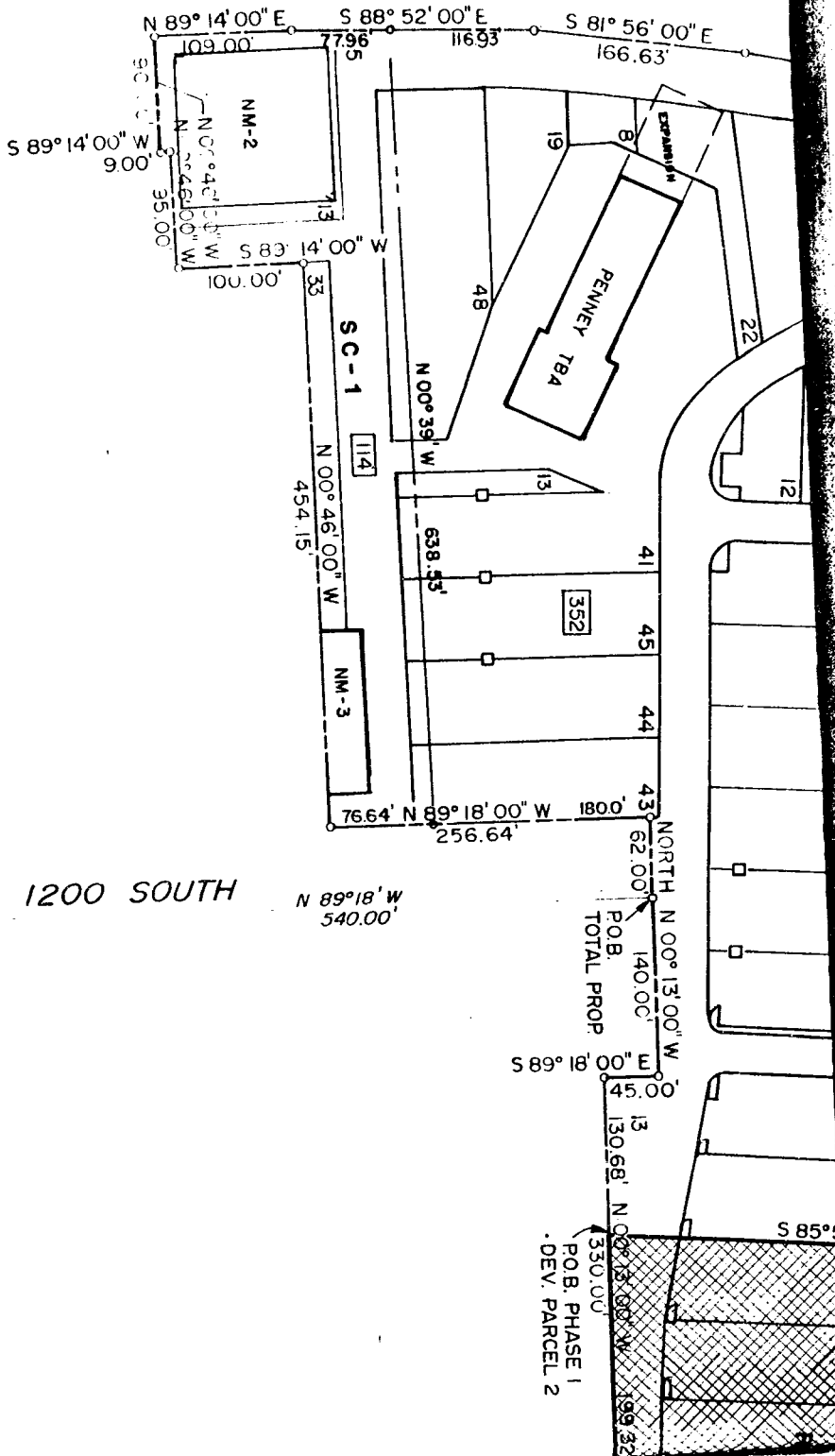
	GROSS SQ. AREA	FLOOR AREA (G.L.A.)
PHASE I:		
MARKET:		
SKILL:		
1st Floor	48013	66313
2nd Floor	48407	48407
3rd Floor	54823	54823
Subtotal	151243	169543
T.S.A.	151243	169543
Total	151243	169543
GENERAL:		
1st Floor	76293	76293
2nd Floor	77046	76831
Perchouse	7682	7776
Subtotal	161161	157500
T.S.A.	11522	11522
Total	172597	169022
DEVELOPER MAIL BUILDINGS:		
A	65632	64384
B	47623	47623
C	6602	6793
D	7815	8197
E	109401	106828
F&C	21203	20785
Kiosks	1280	1280
Subtotal	255476	253910
2nd Floor Offices	3011	3011
Total	262485	256921
Total Phase I Store Space	603881	588873
Basement Storage Enclosed Mall, Etc.	3220	3220
Total Mall Phase I	67516	67516
PHASE II:		
MARKET:		
RETAIL:		
1st Floor	44973	44973
2nd Floor	45853	45853
Total	90826	90826

RY CORPORATION
 ERS / DEVELOPERS / CONSULTANTS
WOODBURY ARCHITECT
 ke City, Utah 84109 (801) 485-7770

REVISIONS

4/2/86 *WR*
 8/5/86
 9/30/86
 8/8/91

EXHIBIT B-1
 PARCEL PLAN



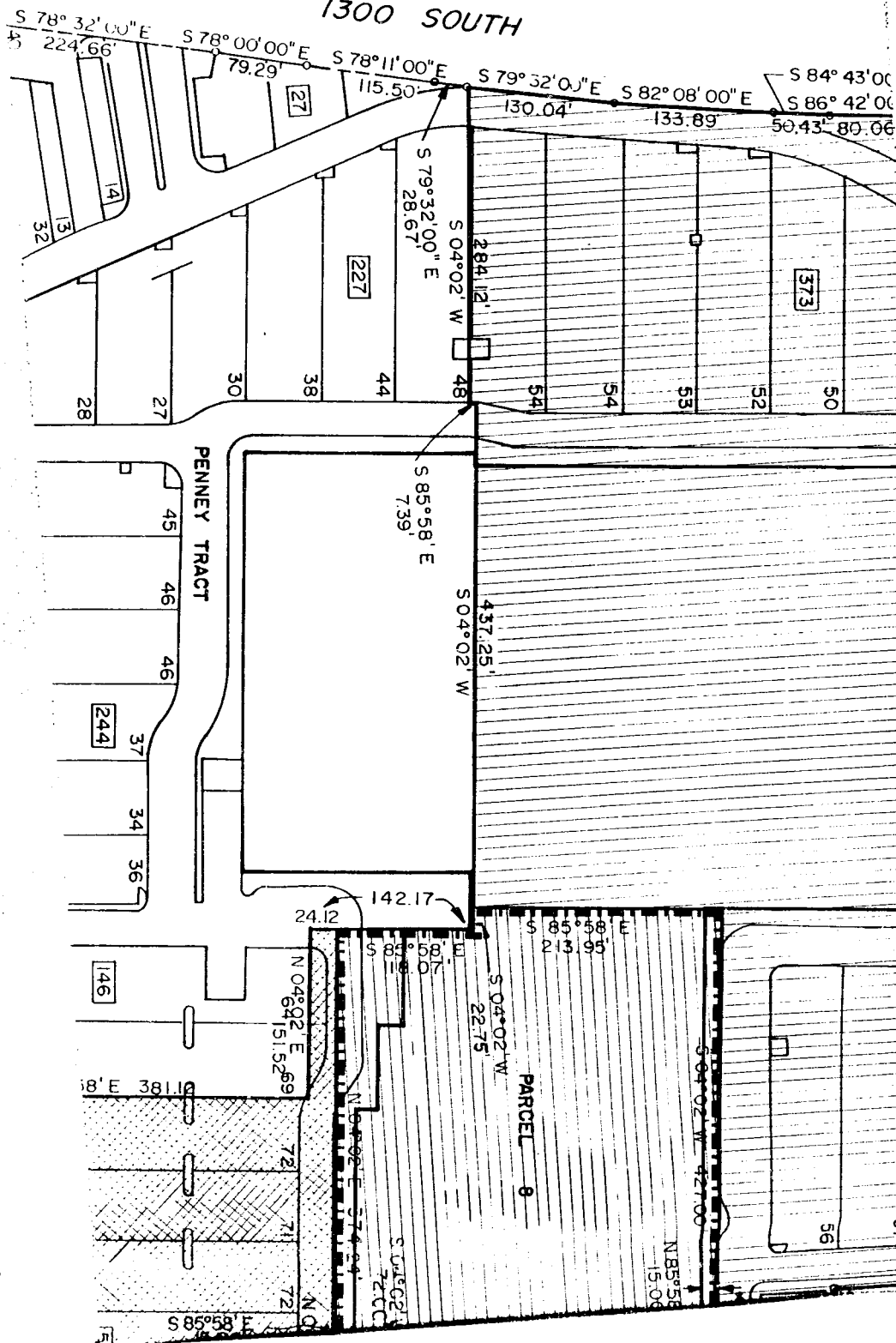
SE CORNER
SECTION 23
T 6 S, R 2 E

NORTH 25.00'

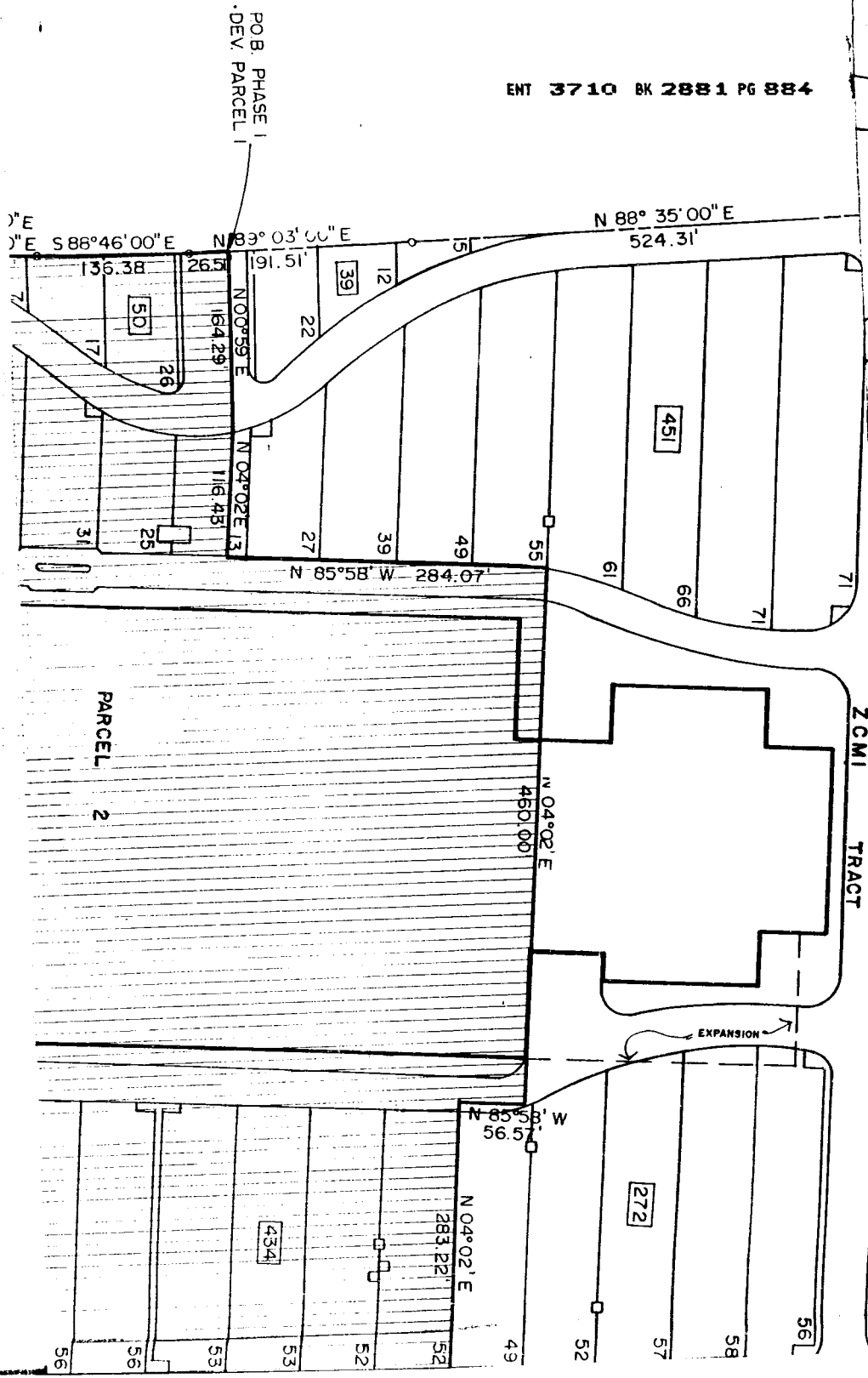
1200 SOUTH

N 89° 18' W
540.00'

1300 SOUTH

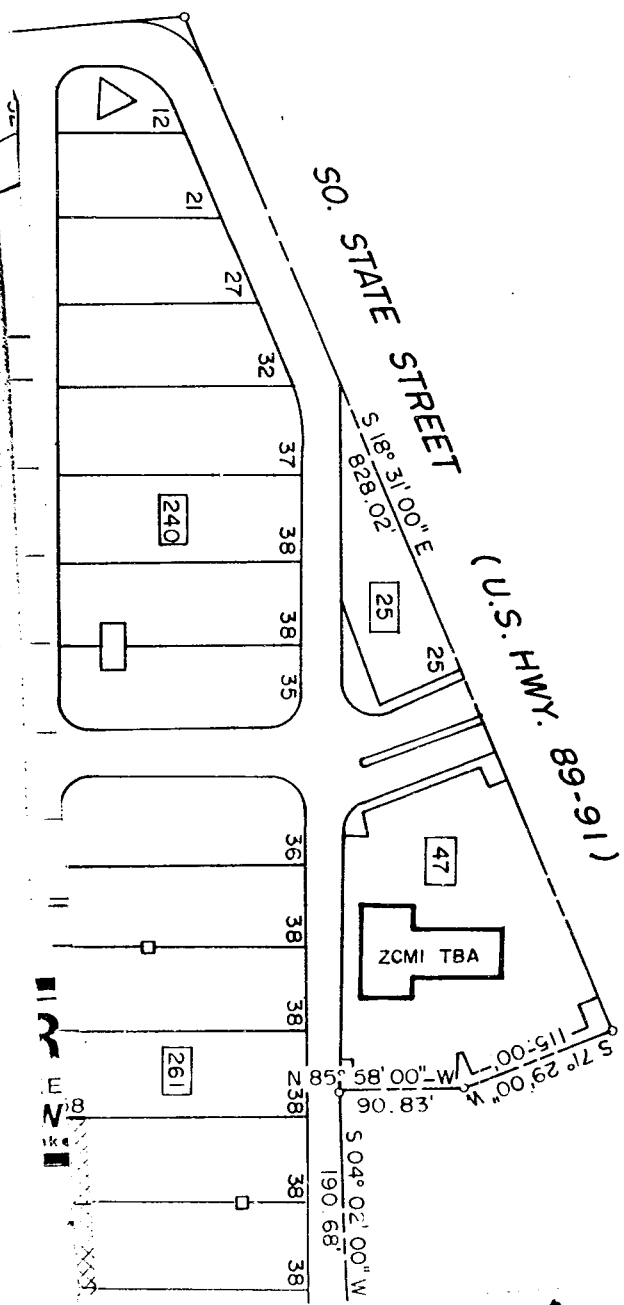


ENT 3710 BK 2881 PG 884



ENT 3710 BK 2881 PG 885

S/4C

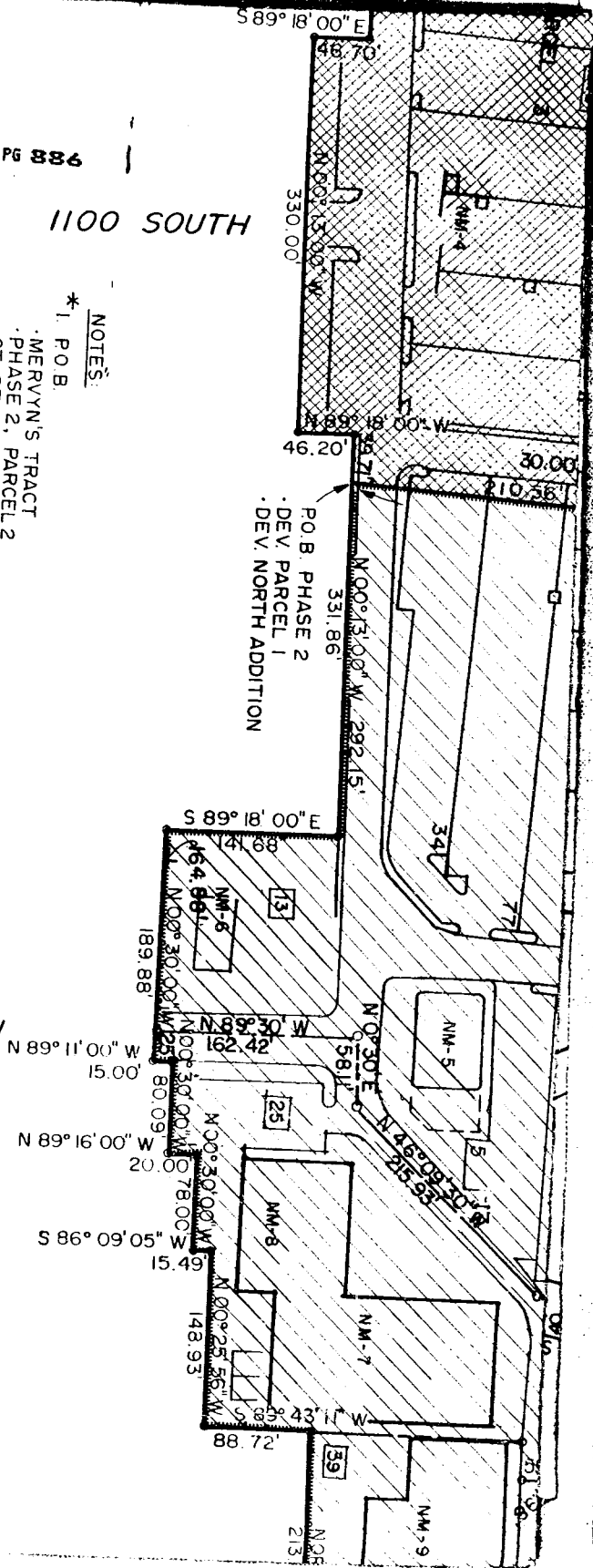


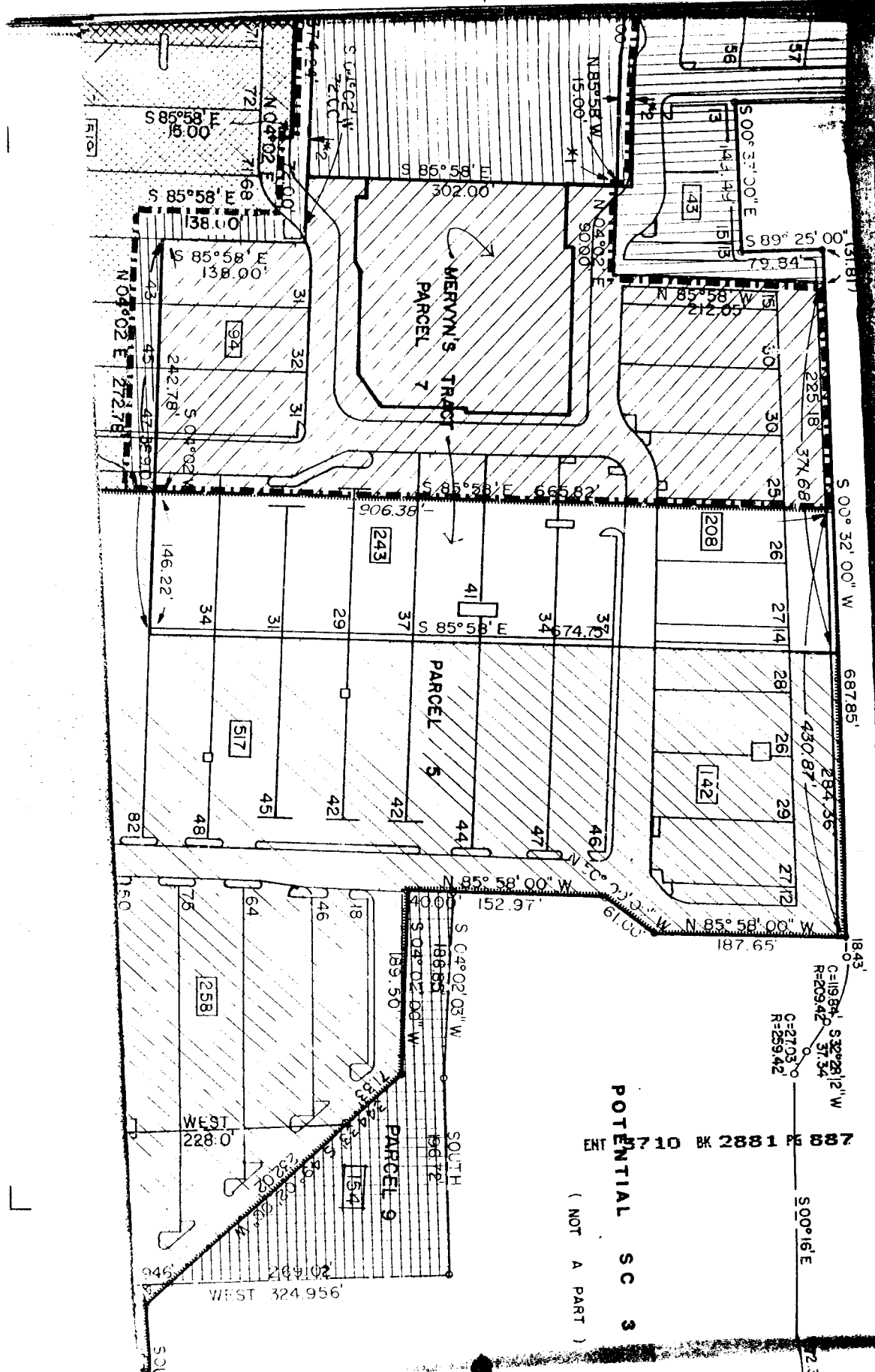
1100 SOUTH

PARCEL PLAN

- NOTES:
- * 1. P.O.B.
 - . MERVYN'S TRACT
 - . PHASE 2, PARCEL 2
 - . CT GENERAL SUB. TO MERVYN'S PORTION
 - . CT GENERAL SUB. PARCEL
 - * 2. 15' FROM BUILDING REQ'D

1000 SOUTH





POTENTIAL SC 3
 ENT 710 BK 2881 P 887
 (NOT A PART)

C=19.84' S 32° 28' 12" W
 R=209.42' 37.34
 C=21.03'
 R=259.42'

S 00° 16' E

WEST 324.956'

SOUTH

723

61 62 63 64 65 66 67 68 69 70

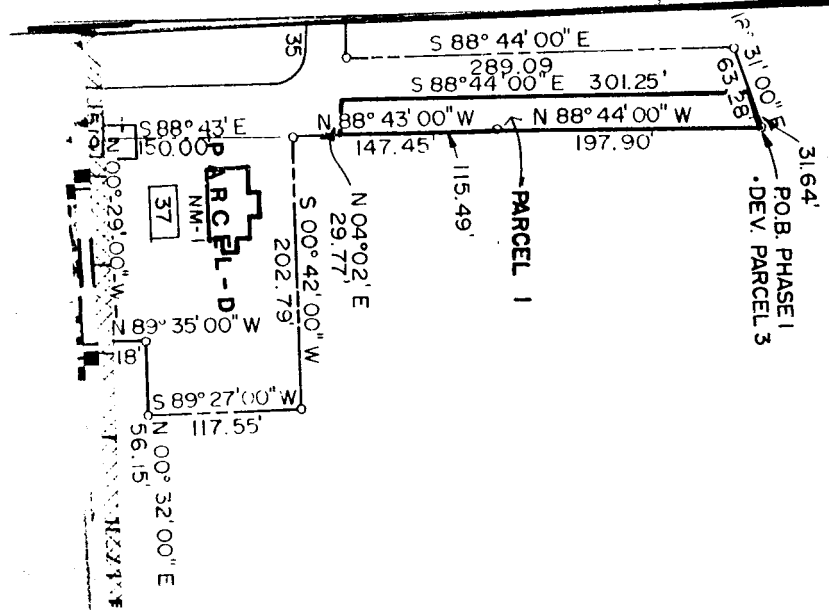
467.95' N 88° 55' 00" W

857.27'

150.94'

29

ENT 3710 BK 2881 PG 888



ENT 3710 BK 2881 PG 889



197.60'

30.00' N 00° 18' E
146.88'

N 00° 32' E
338.70'

PARCEL 6 (EASEMENT)

N 00° 56' 20\"/>

WES
25.00'

800 S



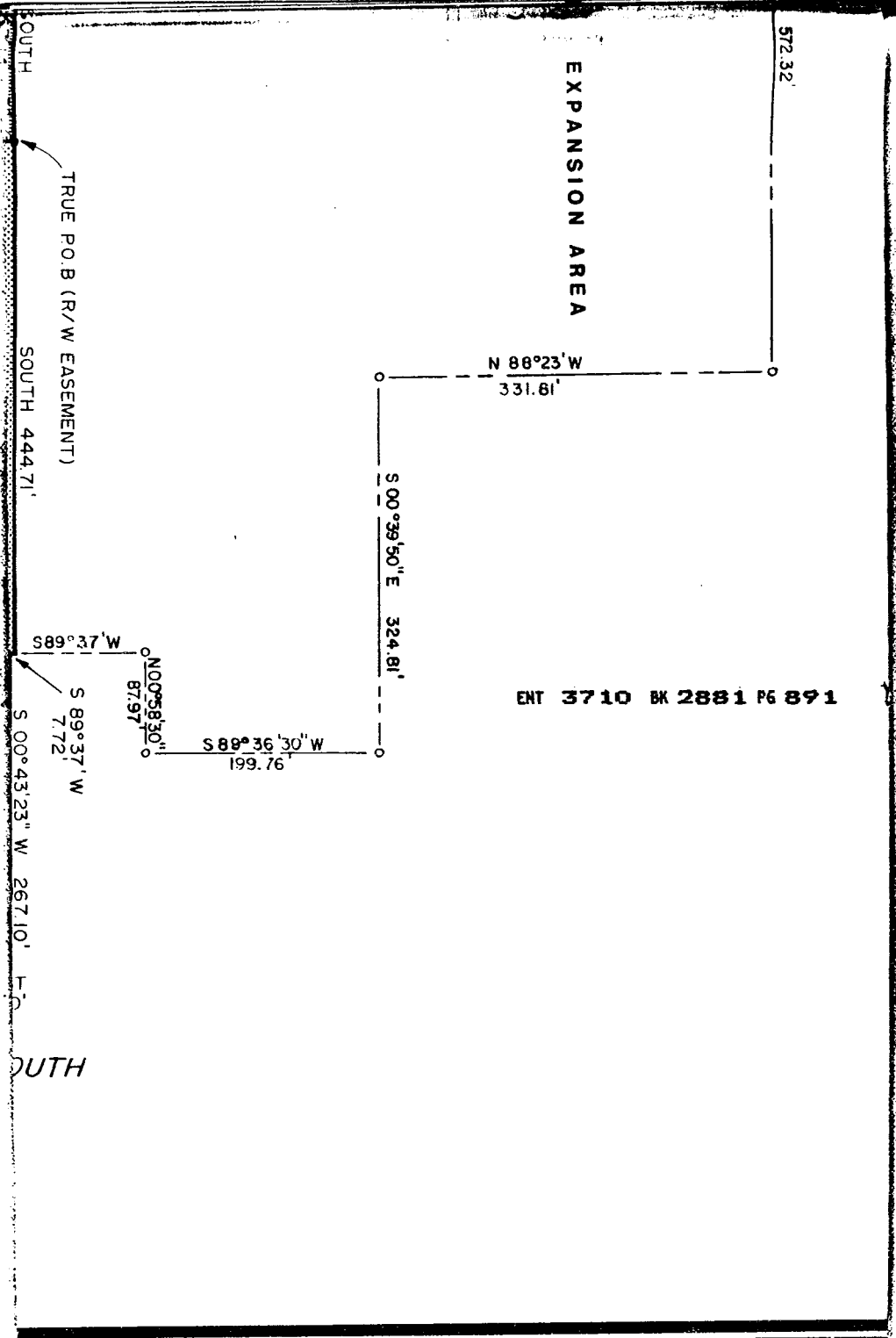
SCALE: 1"=100'



ENT 3710 BK 2881 PG 890

W.D. Allen

EXHIBIT B-2 UN



ENT 3710 BK 2881 P6 891

UNIVERSITY MALL , OREM

ENT 3710 BK 2881 PG 892

, UTAH



WOODBURY

MANAGERS / BROK

LYNN S. V

Salt La

2677 East Parleys Way

07/40

ENT 3710 BK 2881 PG 893

RY CORPORATION

ERS / DEVELOPERS / CONSULTANTS

WOODBURY ARCHITECT

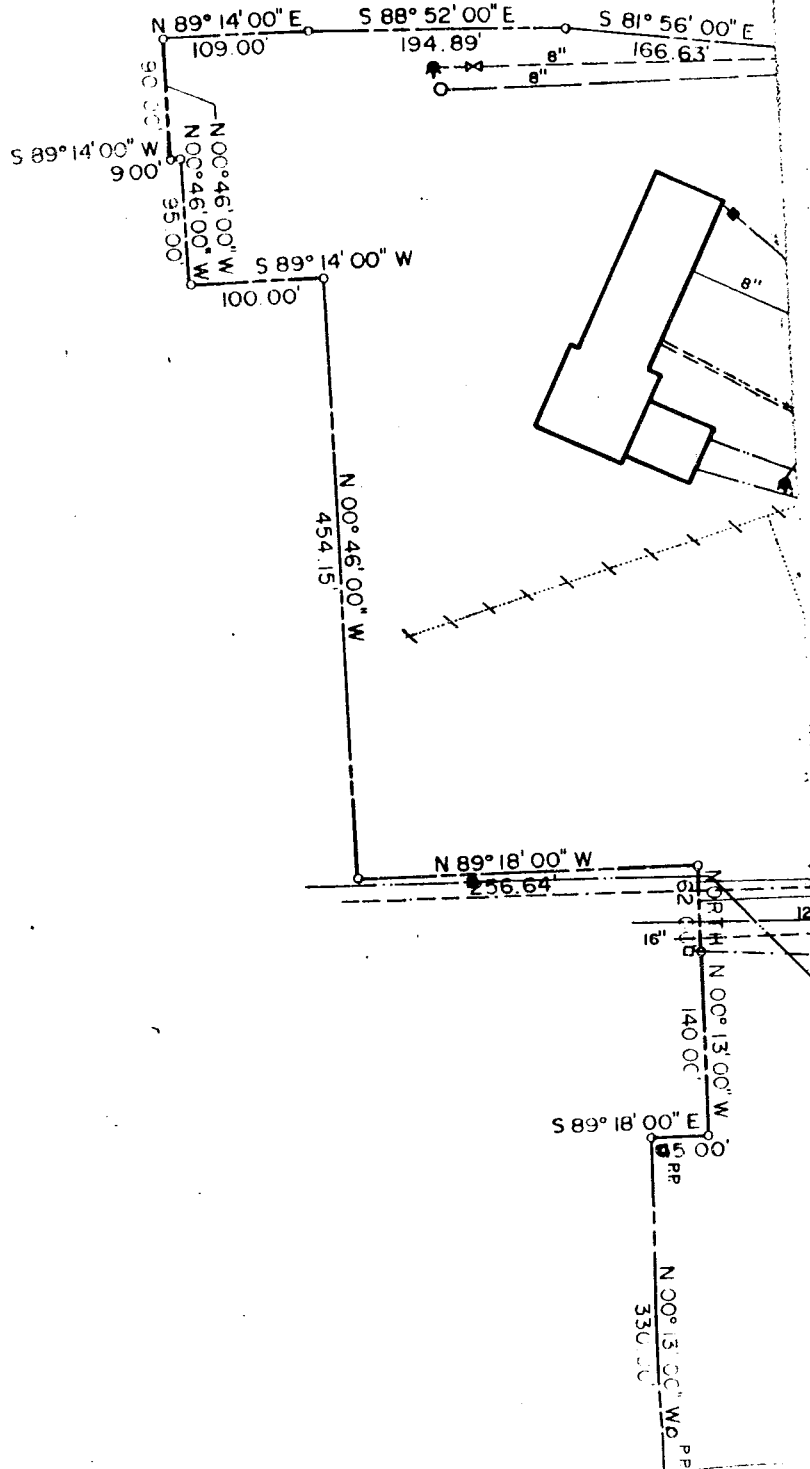
ike City, Utah 84109

(801) 465-7770

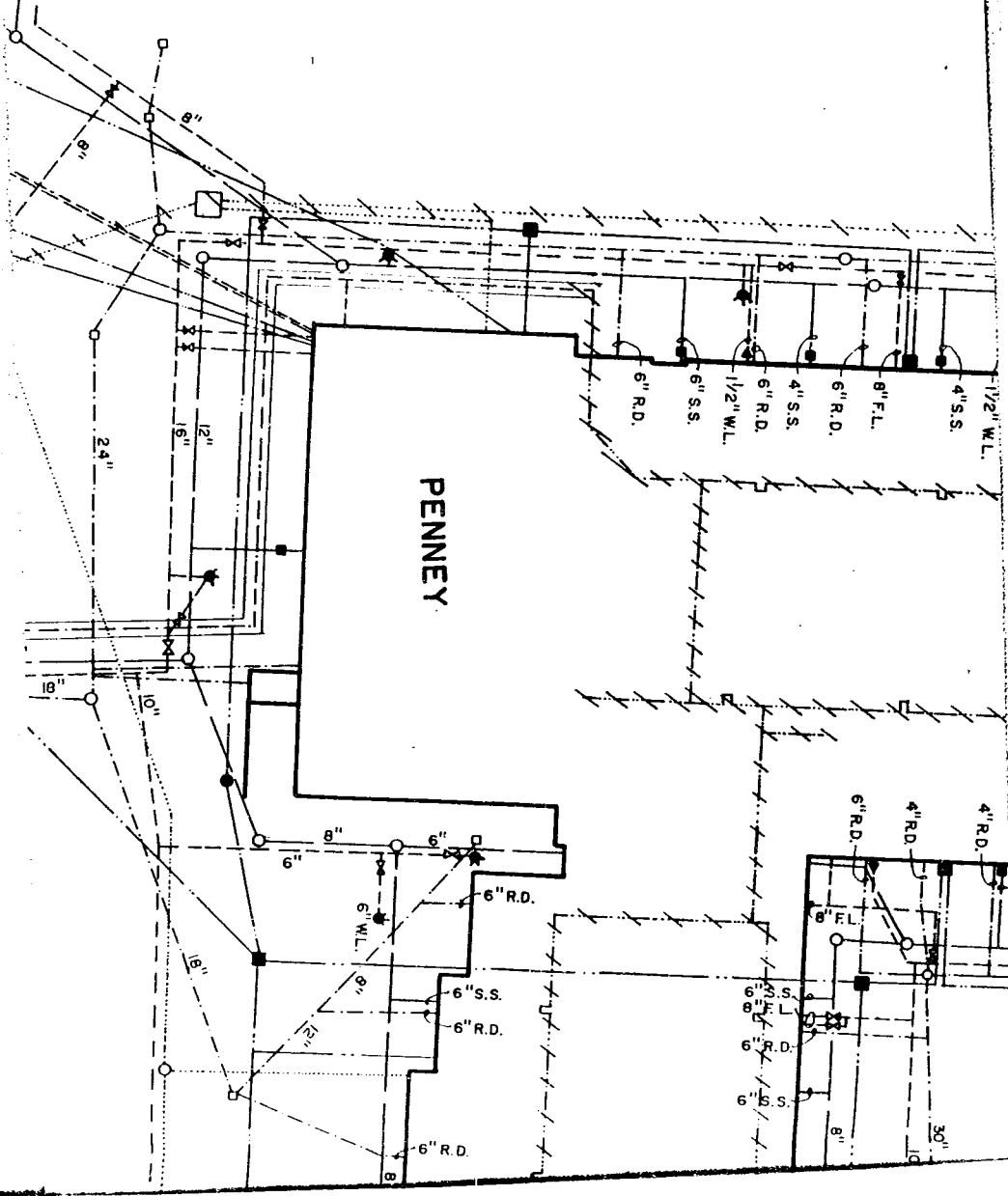
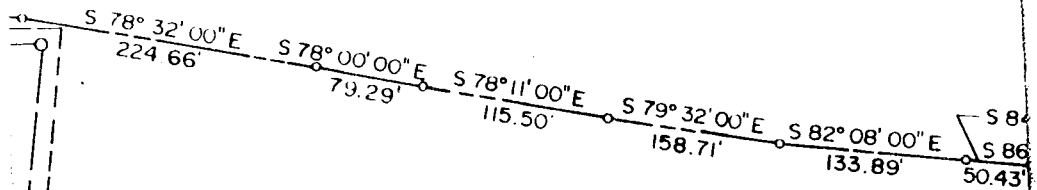
4/2/86
8/5/86
9/30/86
8/8/91

46.70
E 18.00' 89.58

ENT 3710 BK 2881 PG 894

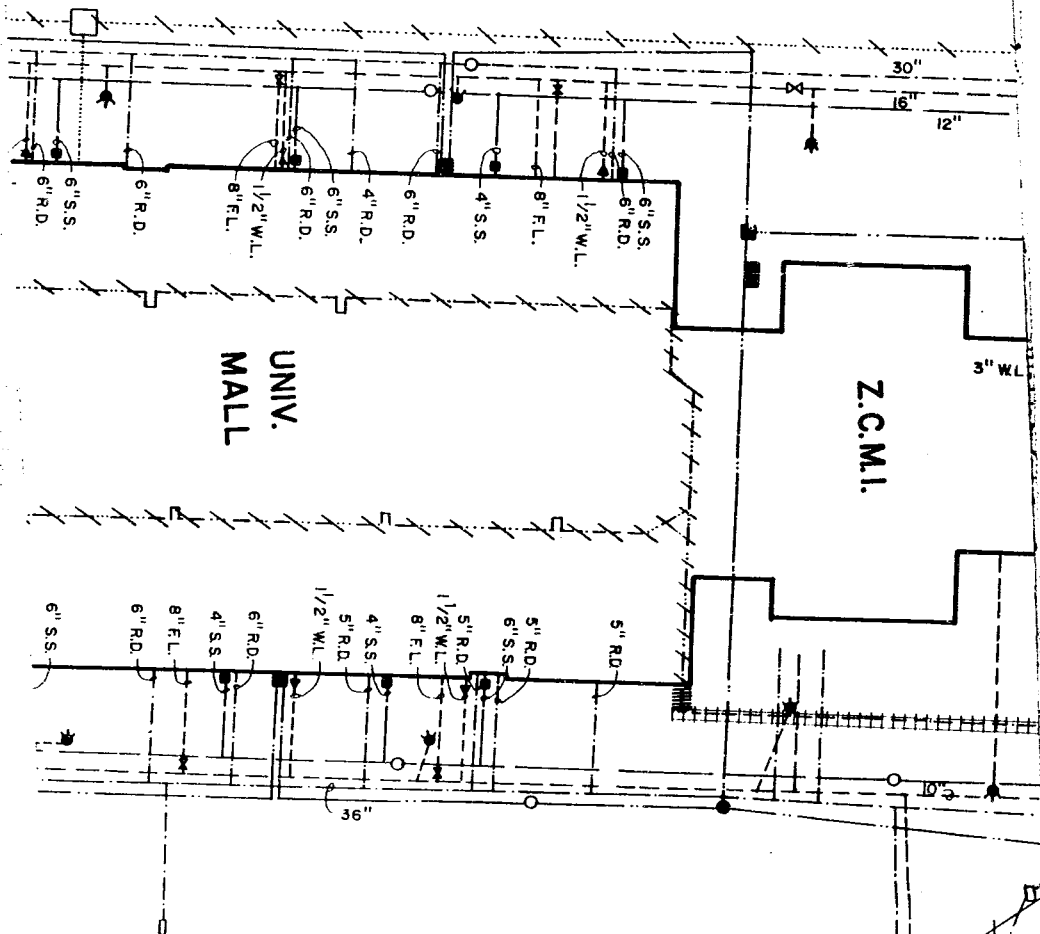


ENT 3710 BK 2881 PG 895

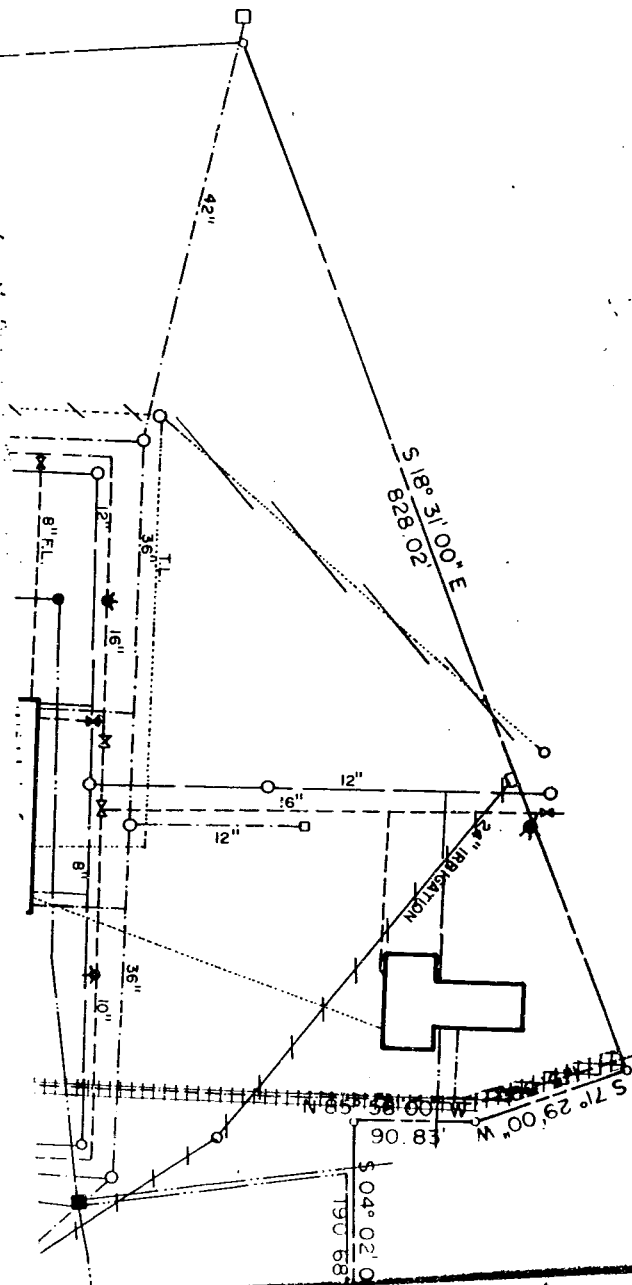


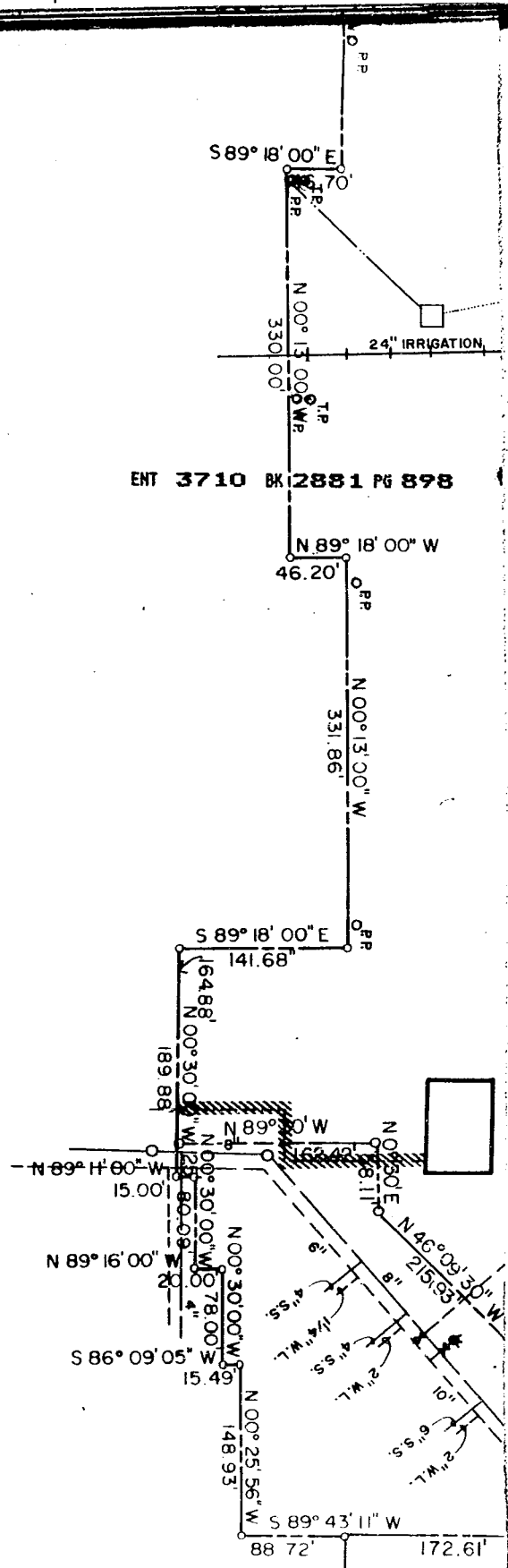
ENT 3710 BK 2881 PG 896

1° 43' 00" E
° 42' 00" E S 88° 46' 00" E N 89° 03' 00" E N 88° 35' 00" E
80.06' 136.38 191.51' 524.31'



ENT 3710 BK 2881 PG 897





ENT 3710 BK 2881 PG 898

S 89° 18' 00" E
70'

N 00° 13' 00" W
330.00'

24" IRRIGATION

N 89° 18' 00" W
46.20'

N 00° 13' 00" W
331.86'

S 89° 18' 00" E
141.68'

164.88'
N 00° 30' 00" W
189.88'

N 89° 16' 00" W
15.00'

N 89° 16' 00" W
N 00° 30' 00" W
S 86° 09' 05" W
15.49'

N 00° 25' 56" W
148.93'

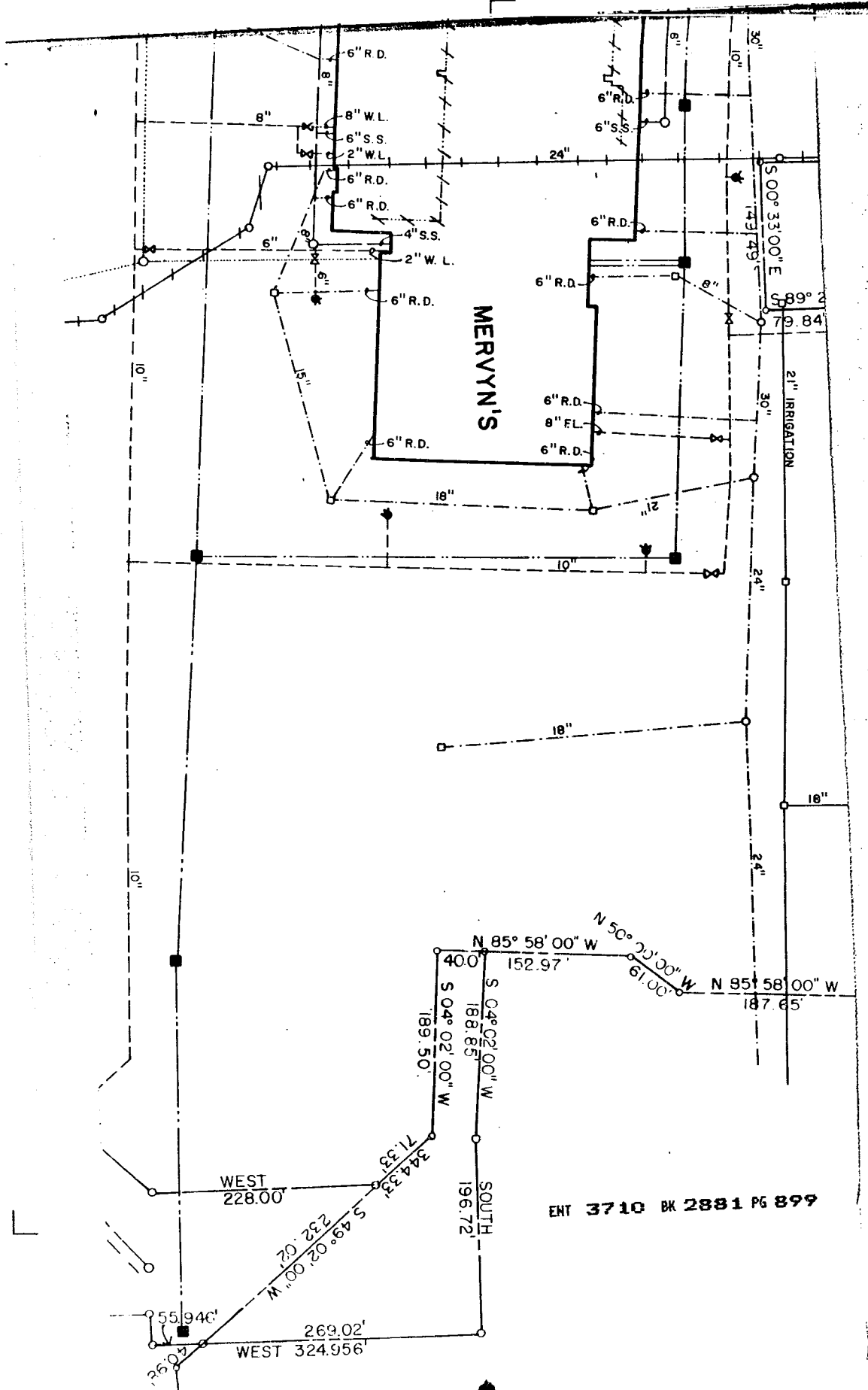
S 89° 43' 11" W
88.72'

172.61'

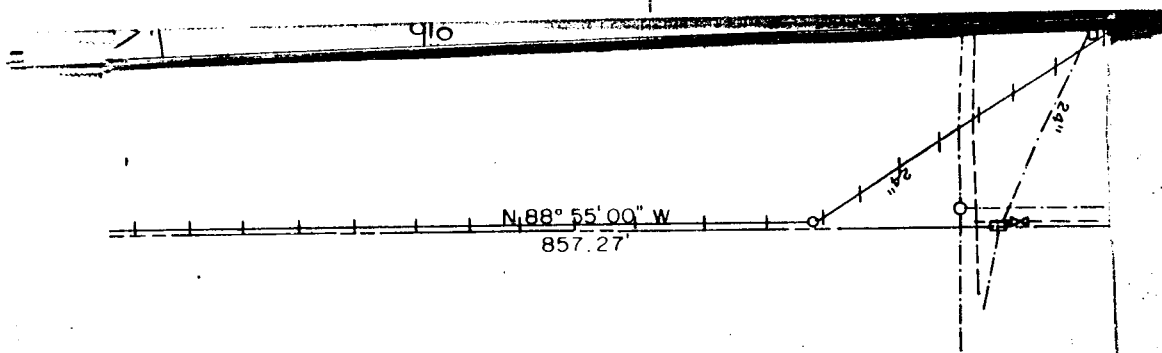
N 00° 30' 00" E
8.11'

N 46° 05' 30" W
215.93'

6" S.S.
2" W.L.
10'
6" S.S.
2" W.L.



ENT 3710 BK 2881 PG 899



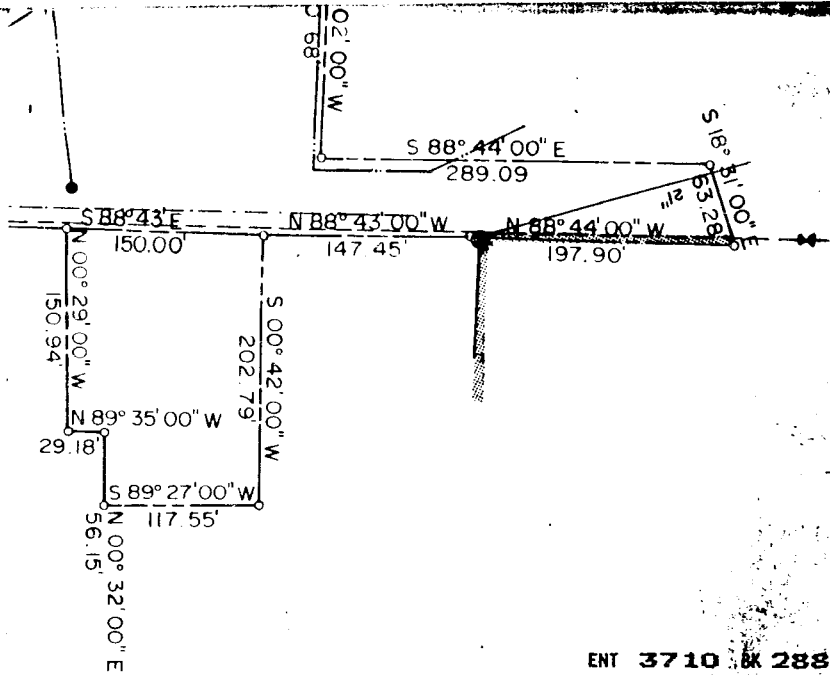
5' 00" E



S 00° 32' 00" W
687.85



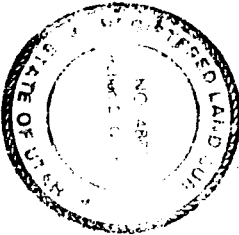
ENT 3710 BK 2881 Pg 900



ENT 3710 R 2881 PG 901

Certification for Survey

I, Robert D. Gunnell, do hereby certify that I am a Registered Land Surveyor, and that I hold certificate No. 4660 as prescribed under the laws of Utah. I further certify, by authority of the Omeets, the survey prepared by me entitled, "University Mall," actually made upon the ground and that it and the information, courses and distances shown thereon are correct, that the title lines and lines of actual possession are the same, that the size location and type of buildings and improvements are as shown on all are within the boundary lines of the property, that the easements, right-of-ways and improvements are as shown and depicted on; that all utility services required for the operation of the premises either enter the premises through adjoining public streets or the survey shows the point of entry and location of any utilities which pass through or are located on adjoining private land that the survey shows the location of all storm drainage systems for the collection and disposal of all roof and surface drainage and that the parcels described hereon do not lie within flood hazard areas in accordance with a document entitled, "Department of Housing and Urban Development, Federal Insurance Administration Special Flood Hazard Area Maps."



Robert D. Gunnell
Robert D. Gunnell

April 8, 1983
Date

NORTH
213'12"

N 89° 41' 00"
197.60'

ENT 3710 BK 2881 PG 902


SCALE: 1" = 100'

PLAT 40140, 16, NOVEMBER, 1982, IN THE OFFICE OF THE RECORDER, UTAH

- _____ SANITARY SEWER
- WATER
- TELEPHONE-UNDERGROUND
- STORM SEWER
- GAS-UNDERGROUND
- GAS-ABOVE GROUND
- IRRIGATION LINE
- _____ R.D. ROOF DRAIN
- _____ W.L. WATERLINE
- _____ F.L. FIRE LINE
- _____ S.S. SANITARY SEWER
- _____ S.D. STORM DRAIN
- _____ I.L. IRRIGATION LINE
- _____ D.I. DROP INLET
- _____ F.L. FIRE LINE
- _____ T.L. TELEPHONE LINE
- _____ T.P. TELEPHONE POLE
- _____ P.L. POWER LINE
- _____ P.V. POWER VAULT

EXHIBIT B-3

U
I
R
V

SOUTH
157.14'
M

ENT 3710 BK 2881 PG 903

LEGEND

- STORM SEWER INLET
 - PROPERTY CORNER
 - MANHOLE
 - ⊕ WATER VALVE
 - SANITARY WASTE CLEANOUT
 - ▲ WATER METER
 - POWER VAULT
 - ▼ FIRE HYDRANT
 - 6'X6'X6' PULL BOX
 - 48" M.H. USED AS A PULL BOX
- UNDERGROUND POWER

UNIVERSITY MALL , OREM ,

ENTRY 28160, 16 NOVEMBER 1982, IN THE OFFICE OF THE RECORDER, UTAH COUNTY, UTAH, BOOK 2013, PAGE 206.

CENTERLINE OF A UTAH POWER AND LIGHT COMPANY POWER LINE, AN EASEMENT DESCRIPTION OF WHICH HAS NOT BEEN RECORDED, BUT LOCATED AS SHOWN ON PLANS.

CENTERLINE OF A MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY LINE, AN EASEMENT DESCRIPTION OF WHICH HAS NOT BEEN RECORDED, BUT LOCATED AS SHOWN ON PLANS.


AN EASEMENT OF UNDETERMINED WIDTH FOR ELECTRICAL AND TELEPHONE LINES RECORDED AS ENTRY 14867, 3 NOVEMBER 1971, IN THE OFFICE OF THE RECORDER, UTAH COUNTY, UTAH, BOOK 1244, PAGE 410.

A 20 FOOT EASEMENT GRANTED TO MOUNTAIN FUEL SUPPLY COMPANY RECORDED AS ENTRY 15381, 12 NOVEMBER 1971, IN THE OFFICE OF THE COUNTY RECORDER, UTAH COUNTY, UTAH, BOOK 1247, PAGE 190.



PP

UTAH

**WOODBUR**
MANAGERS BROKE
LYNN S. W
Salt Lake
2077 East Parleys Way

Platted
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ENT 3710 BK 2881 PG 903

EASEMENTS

The property described contains and is subject to the following easements as shown below:

AN EASEMENT GRANTED TO THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY RECORDED AS ENTRY 6838, MAY 15, 1972 IN THE OFFICE OF THE RECORDER; UTAH COUNTY, UTAH BOOK 1273, PAGE 72.

A 10 FOOT EASEMENT GRANTED TO MOUNTAIN FUEL SUPPLY COMPANY RECORDED AS ENTRY 15754, 10 OCTOBER, 1972, IN THE OFFICE OF THE RECORDER, UTAH COUNTY, UTAH, BOOK 1296, PAGE 59; AND IN THE NORTH ADDITION, ENTRY 5075, 23 FEBRUARY, 1981, BOOK 1896, PAGE 379.

A 20 FOOT EASEMENT GRANTED TO MOUNTAIN FUEL SUPPLY COMPANY RECORDED AS ENTRY 15382, 12 NOVEMBER 1971 IN THE OFFICE OF THE RECORDER, UTAH COUNTY, UTAH BOOK 1247, PAGE 191.

A 15 FOOT EASEMENT GRANTED TO OREM CITY CORPORATION, RECORDED AS ENTRY 7679, 17 JUNE 1971, IN THE OFFICE OF THE RECORDER, UTAH COUNTY, UTAH, BOOK 1225, PAGE 78-80.

A 15 FOOT EASEMENT GRANTED TO PROVO BENCH CANAL AND IRRIGATION COMPANY-CURTIS DITCH RECORDED AS ENTRY 7817, 21 JUNE 1971, IN THE OFFICE OF THE RECORDER, UTAH COUNTY, UTAH, BOOK 1225, PAGE 285-286.

A THREE-PARTY OPERATING AGREEMENT BETWEEN UNIVERSITY MALL, INC., ZIONS COOPERATIVE MERCANTILE INSTITUTION, AND J. C. PENNEY PROPERTIES INC., RECORDED AS ENTRY NO. 14867, 5 NOVEMBER 1971, IN THE OFFICE OF THE UTAH COUNTY RECORDER, BOOK 1244, PAGE 410 TO 552.

A 16 FOOT EASEMENT GRANTED TO MOUNTAIN FUEL SUPPLY COMPANY RECORDED AS ENTRY NO. 10519, 17 JULY 1972, IN THE OFFICE OF THE COUNTY RECORDER, UTAH COUNTY, UTAH, BOOK 1282, PAGE 569 TO PAGE 571.

AN AREA COMPOSED OF THREE 10 FOOT WIDE EASEMENTS GRANTED TO MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY, BY Z. C. M. I., J. C. PENNEY'S, AND UNIVERSITY MALL CORPORATION, RECORDED AS ENTRIES NO. 15715, 15716, AND 15717; 10 OCTOBER 1972, IN THE OFFICE OF THE UTAH COUNTY RECORDER, BOOK 1296, PAGES 16-21.

A 20 FOOT EASEMENT GRANTED TO MOUNTAIN FUEL SUPPLY COMPANY RECORDED AS

Y CORPORATION
 RS / DEVELOPERS / CONSULTANTS
OODBURY ARCHITECT
 City, Utah 84109 (801) 486-7770

4/2/86
 8/8/91
 EXHIBIT B-5
 PARCEL PLAN