

After recording mail to Auerbach Co., c/o  
J. Holsworth, 800 Continental Bank Bldg.  
Salt Lake City, Utah

ENCROACHMENT AGREEMENT

**2446043**

THIS ENCROACHMENT AGREEMENT is entered into as of the 23rd  
day of February, 1972, by and between FASHION PLACE  
ASSOCIATES, a limited partnership in which ERNEST W. HAHN, INC., a  
California corporation is the general partner, hereinafter referred  
to as "Developer"; and SEARS, ROEBUCK AND CO., a New York corporation  
hereinafter referred to as "Sears" and AUERBACH COMPANY, a Utah  
corporation, hereinafter referred to as "Auerbach".

THIS AGREEMENT, is made with reference to the following  
facts:

The parties to this agreement are presently developing a  
regional Shopping Center in the County of Salt Lake, State of Utah on  
adjoining parcels of land being described in Exhibit "A" attached  
hereto and by this reference made a part hereof. In connection with  
the development of said Shopping Center the parties have entered into  
a Construction, Operation and Reciprocal Easement Agreement (herein-  
after called "REA"), dated June 14, 1971 and recorded on said date in  
the official records of the County of Salt Lake as document number  
2391096, such recording commencing in Book 2968 at page 446 of said  
records.

Article XVIII of said REA contemplates that during the  
course of construction, one or more of the parties' improvements  
might inadvertently be constructed upon the property of another party  
and provides for the recognition of such encroachment.

Article II of said REA contains mutual grants of ease-  
ments for structural overhangs which cross property lines up to a  
distance of fourteen (14) feet.

1-29-72

MAR 29 1972  
Recorded at 3:43P m.  
Request of WESTERN STATES TITLE CO.  
By CKH Deputy  
Notary Public, Salt Lake City, Utah

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At the present time, the design for the Sears store and the materials proposed for use in connection with the construction therewith will cause an encroachment of said Store upon the Developer property to an insignificant extent (which at the present time is estimated to be not more than nine (9) inches at any one point). Notwithstanding that the REA provides for the encroachment, the parties are executing this agreement to clarify the situation with respect to the aforesaid encroachment to avoid any possible misunderstanding on the part of persons who may have occasion to review the transactions connected with the Shopping Center at a later date.

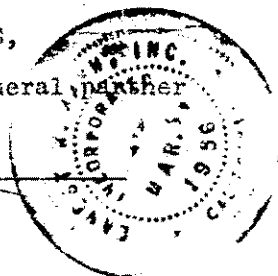
NOW THEREFORE, in accordance with the foregoing, the parties hereto agree that the Sears Store may encroach upon the Developer's property by reason of the special architectural treatment thereof adjacent to the entrance of said store abutting the Enclosed Mall (as defined in the REA) and by reason of concrete masonry units having ribbed exterior surfaces at the locations shown on the plat map which is attached hereto as Exhibit "B" and by this reference made a part hereof. Developer and Auerbach each grant to Sears an easement for such encroachments which easement shall last as long as the Sears Store exists and which easement shall include all of the rights granted for construction easements as set forth in Article II, Section C of the REA. Sears agrees that it will maintain such portions of its building as may encroach across its property line to the extent it is required to maintain its improvements under the REA.

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IN WITNESS WHEREOF, the parties hereto have executed this agreement to be effective as of the date first above written.

FASHION PLACE ASSOCIATES,  
a limited partnership.  
Ernest W. Hahn, Inc. general partner

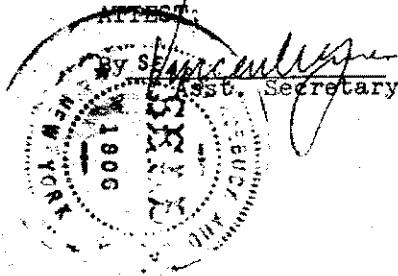
By *Ernest W. Hahn*  
Ernest W. Hahn



1-29-72

By \_\_\_\_\_

ENCROACHMENT AGREEMENT  
January 29, 1972  
(cont.)



LEGAL  
APPROVAL  
766-PC  
JHG 3-16-72

SEARS, ROEBUCK AND CO.

BY [Signature]  
Vice President

AUERBACH COMPANY

BY [Signature]  
BY [Signature]

1-29-72

EXHIBIT "A"

FASHION PLACE SHOPPING CENTER

MURRAY, UTAH

"TRACTS"

PART I DEVELOPER TRACT - 44.034 Acres  
(Includes Auerbach's common area tract)

Parcel 1

Description:

Beginning at a point on the easterly line of State Street due South 1665.49' and due east 602.88' from the N.W. corner of Sec. 19, T.2 S.R.1.E., S.L.B. & M. said point of beginning also being S 2°16'10" W 1605.92' and S 87°43'50" E 65.50' from the monument in the intersection of 6100 South and State Streets; thence S 87°43'50" E 275.00'; thence N 2°16'10" E 207.50'; thence N 87°43'50" W 32.50'; thence N 2°16'10" E 14.30'; thence N 86° W 242.61' to State Street; thence S 2°16'10" W 229.13' to the point of beginning (1.410 acres).

Also:

Beginning at a point on the easterly line of State Street due South 257.93' and due east 643.67' from the N.W. corner of Sec. 19, T.2 S., R.1.E., S.L.B. & M said point of beginning also being S 2°16'10" W 197.85' and S 87°43'50" E 50.51' from the monument in the intersection of 6100 South and State Streets; thence S 87°43'50" E 150.00'; thence N 2°16'10" E 150.00' to the South line of 6100 South Street; thence East 630.55'; thence easterly along a 2671.675' radius curve to the right through a central angle of 6°25'37", a distance of 299.69' to a point of reverse curve where the bearing between curve centers is S 6°25'37" W; thence easterly along a 2437.545' radius curve to the left through a central angle of 7°02'34", a distance of 299.62'; thence N 89°23'03" E 217.02'; thence southeasterly along a 15' radius curve to the right through a central angle of 90°36'57", a distance 23.72'; thence south 103.12'; thence N 89°10'14" W 242.70' along a fence; thence south 515.32' along a fence; thence east 231.75' to a point on a 1600' radius curve, the center of which bears N 83°18'07" W; thence southwesterly along said curve through a central angle of 6°18'07", a distance of 175.98' to a point of reverse curve, where the bearing between curve centers is S 77° E; thence southerly along an 1816.638' radius curve to the left through a central angle of 10°51'45", a distance of 344.41'; thence N 87°43'50" W 274.43'; thence S 2°16'10" W 169.14'; thence N 87°43'50" W 463.50'; thence N 2°16'10" E 41.0'; thence N 87°43'50" W 327.50'; thence N 2°16'10" E 221.00'; thence N 87°43'50" W 10.00'; thence N 2°16'10" E 296.67'; thence N 87°43'50" W 120.00'; thence N 2°16'10" E 185.00'; thence N 87°43'50" W 366.08' to the easterly line of State Street; thence N 1°02'50" E 393.97' to the point of beginning. (35.211 acres)

Also:

Parcel 2

Description:

Beginning at a point on the easterly line of State Street due south 651.84' and due east 636.47' from the N.W. corner of Sec. 19, T.2S., R.1 E., S.L.B. & M., said point of beginning also being S 2°16'10" W 591.74' and S 87°43'50" E 58.92' from the monument in the intersection of 6100 South and State Streets S 1°02'50" W

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308.64' and S 2°16'10" W 304.89'; thence S 86°E 242.61'; thence S 2°16' 10" W 185.90'; thence S 87°43' 50" E 247.00'; thence N 2°16' 10" E 325.02'; thence N 87°43' 50" W 19.00'; thence N 2°16' 10" E 296.67'; thence N 87°43' 50" W 120.00'; thence N 2°16' 10" E 185.00'; thence N 87°43' 50" W 366.08' to the point of beginning. (7.413. Acres)

**PART II AUERBACH'S TRACT**

All that certain plot and parcel of land located within the shopping center which is located under Building C, under the service area adjoining Building C, and under reasonable access to and from the service area, and under abutting sidewalks and other appurtenances for reasonable access to and from Building C, all as more particularly designated on Exhibit "A" of the Auerbach's lease, and described as follows:

Starting from the N.W. corner of Parcel 2, S 87°43' 50" E, 366.08'; thence S 2°16' 10" W, 63.00' to the point of beginning; thence S 2°16' 10" W, 122.00'; thence S 87°43' 50" E, 120.00'; thence S 2°16' 10" W, 212.50'; thence N 87°43' 50" W, 212.50'; thence N 2°16' 10" E; 212.50'; thence S 87° 43' 50" E, 10.00'; thence N 2°16' 50" E, 122.00'; thence S 87°43' 50" E, 82.50' to the point of beginning, containing 1.060 Acres.

**PART III SEARS TRACT - 19.259 Acres**

**Parcel 3**

**Description:**

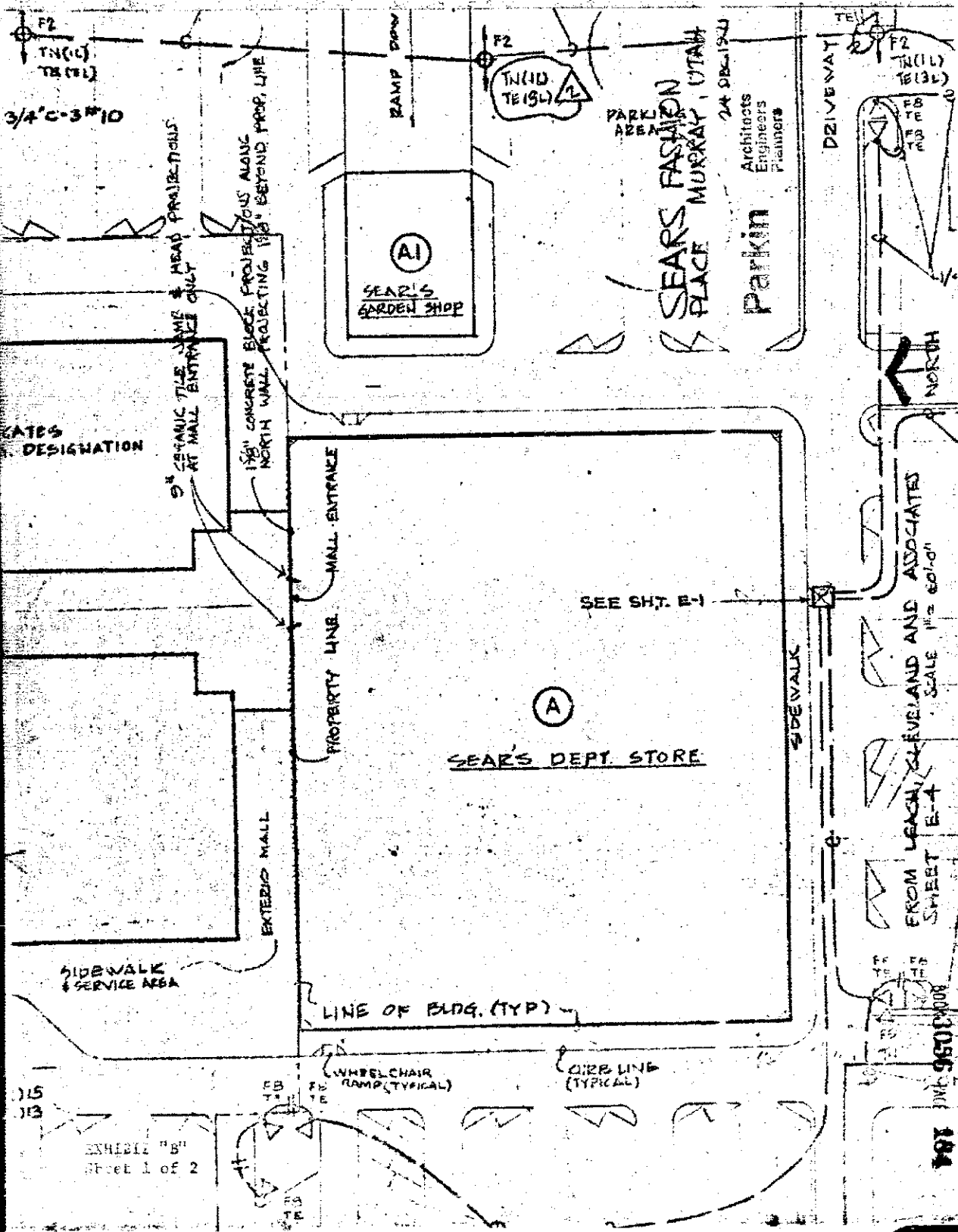
Beginning at a point on the easterly line of State Street due south 1665.49' and due east 602.88' from the N.W. corner of Sec. 19, T.2 S., R.1 E., S.L.B. & M., said point of beginning also being S 2°16' 10" W 1605.92' and S 87°43' 50" E 65.50' from the monument in the intersection of 6100 South and State Streets; thence S 87°43' 50" E 275.00'; thence N 2°16' 10" E 207.50'; thence S 87°43' 50" E 214.50'; thence N 2°16'10" E 104.02'; thence S 87°43' 50" E 327.50'; thence S 2°16' 10" W 41.00'; thence S 87°43' 50" E 463.50'; thence N 2°16' 10" E 169.14'; thence S 87°43' 50" E 274.43' to the west line of Third East Street, said point being on an 1816.638' radius curve the center of which bears S 87°51' 45" E; thence southerly along said curve to the left through a central angle of 1°32' 15", a distance of 48.75'; thence S 0°36' W 700.61'; thence southwesterly along a 15' radius curve to the right through a central angle of 94°48' 25", a distance of 24.82' to the northerly line of 6400 South Street; thence along said northerly line N 84° 35' 35" W 1528.85'; thence northwesterly along a 40' radius curve to the right through a central angle of 89°02' 15", a distance of 62.16' to the easterly line of State Street; thence N 4°26' 40" E 106.60'; thence N 2°16' 10" E 93.14' to the point of beginning, containing 19.259 acres.

**PART IV AUERBACH'S COMMON AREA TRACT - 7.413 Acres**

**Parcel 2**

**Description:**

Beginning at a point on the easterly line of State Street due south 651.84' and due east 636.47' from the N.W. corner of Sec. 19, T.2 S., R.1 E., S.L.B. & M., said point of beginning also being S 2°16' 10" W 591.74' and S 87°43' 50" E 58.92' from the monument in the intersection of 6100 South and State Streets S 1°02' 50" W 308.64' and S 2°16' 10" W 304.89'; thence S 86° E 242.61'; thence S 2°16'10" W 185.90'; thence S 87°43' 50" E 247.00'; thence N 2°16'10" E 325.02'; thence N 87°43' 50" W 19.00'; thence N 2°16' 10" E 296.67'; thence N 87°43' 50" W 120.00'; thence N 2°16' 10" E 185.00'; thence N 87°43' 50" W 366.08' to the point of beginning. (7.413 Acres)



**POOR COPY**

EXHIBIT "B"  
Sheet 1 of 2

**POOR COPY**

24 DEC. 1971

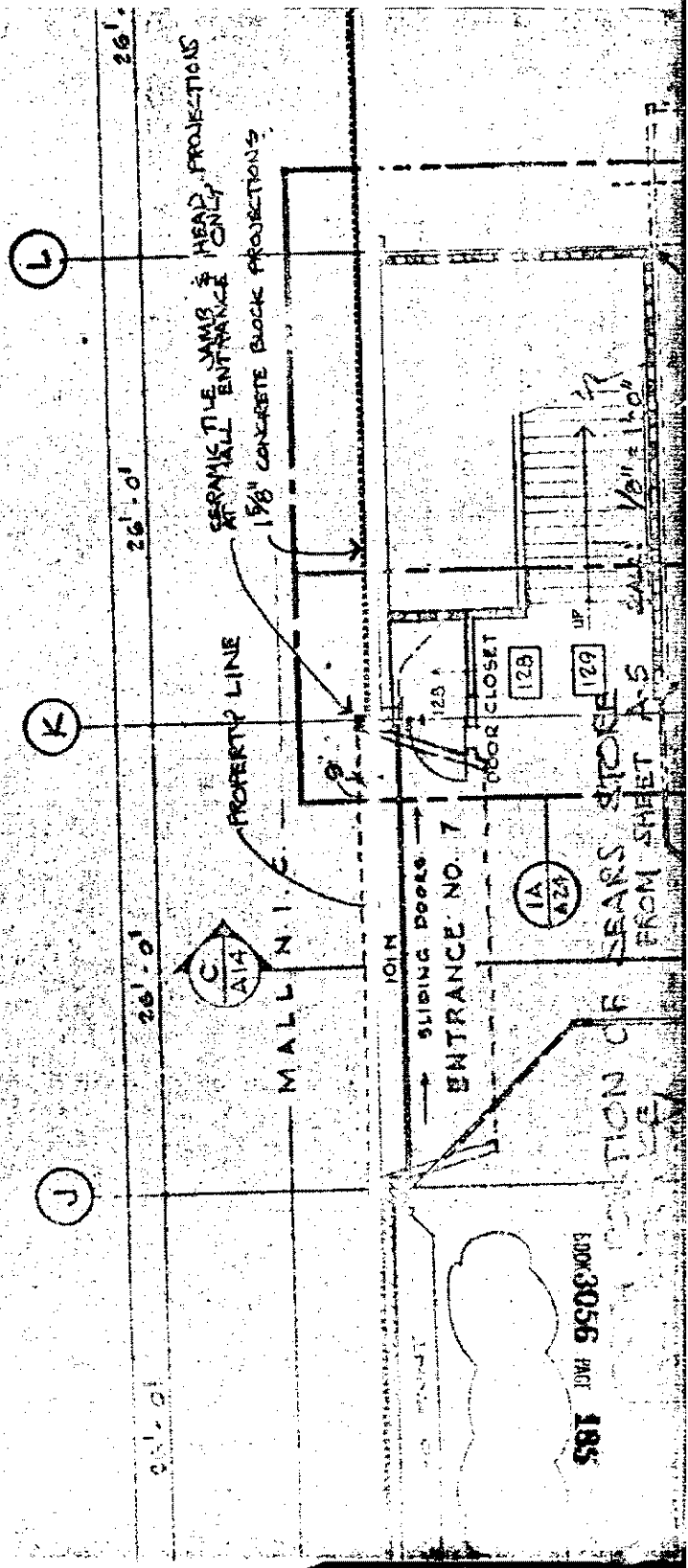
MURRAY, UTAH

FASHION PLACE

MALL

REVISIONS  
BY: [unclear]  
DATE: [unclear]

DATE: [unclear]  
PAGE 2 OF 2



STATE OF *California* )  
COUNTY OF *Los Angeles* ) SS.

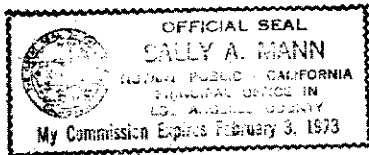
On this *23rd* day of *February* 19*72*,  
before me, the undersigned, a Notary Public in and for said County  
and State, personally appeared **ERNEST W. HAHN**

known to me to be the <sup>general</sup>partners of **FASHION PLACE ASSOCIATES**

the partnership that executed the within instrument, known to me  
to be the persons who executed the within instrument on behalf of  
the partnership therein named, and acknowledged to me that such  
partnership executed the same.

WITNESS my hand and official seal.

SEAL



*Sally A. Mann*  
Notary Public in and for said  
County and State.

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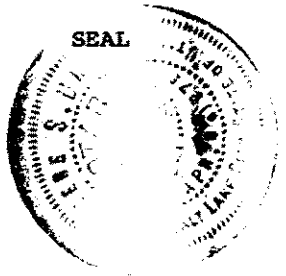
STATE OF *Utah* )  
COUNTY OF *Salt Lake* ) SS.

On this *7* day of *March*, 19*72*  
before me, the undersigned, a Notary Public in and for said  
County and State, personally appeared **FRED F. AUERBACH**  
known to me to be the **President**, and **G. WAYNE CLARK**  
known to me to be the **Secretary**  
of **AUERBACH COMPANY**

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 same.

WITNESS my hand and official seal.

*Eugene A. Gray*  
\_\_\_\_\_  
Notary Public in and for  
said County and State

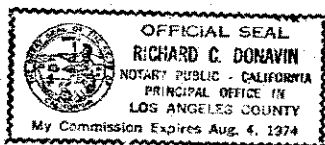


STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES } ss.

On this 26<sup>th</sup> day of March 1973

before me the undersigned, a Notary Public in and for said County and State, came JOHN G. LOWE, known to me to be the Vice President, and VINCENT W. JONES, known to me to be the Assistant Secretary of SEARL, ROEBUCK AND CO., 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 same.

WITNESS my hand and official seal.



SEAL

Richard C. Donavin  
Notary Public in and for  
said County and State