

6936175

6936175
04/21/98 1:32 PM 28.00
NANCY WORKMAN
RECORDER, SALT LAKE COUNTY, UTAH
DENNER & STUART
301 CONGRESS AVE STE.2100
AUSTIN, TX 78701
REC BY:R JORDAN ,DEPUTY - MP

AFTER RECORDING, RETURN TO:

John W. Elliott, Esq.
Drenner & Stuart, L.L.P.
301 Congress Avenue, Suite 2100
Austin, Texas 78701

MEMORANDUM OF LEASE

STATE OF UTAH

§
§
§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF SALT LAKE

THIS MEMORANDUM OF LEASE is entered into as of the 24 day of MARCH, 1998, by and between The Commons at Sugarhouse, L.C., a Utah limited liability company ("Landlord"), and Barnes & Noble Booksellers, Inc., a Delaware corporation ("Tenant").

1. Pursuant to a Lease Agreement (the "Lease") executed by Landlord and Tenant, dated MARCH 24, 1998, Landlord has leased to Tenant certain Premises which are part of the retail shopping center (the "Shopping Center") constructed or to be constructed on the real property in Salt Lake County, Utah, described in Exhibit A attached hereto, together with the nonexclusive use and benefit of all of Landlord's appurtenant rights, privileges and easements.

2. The term of the Lease shall commence on the Commencement Date set forth in the Lease and shall expire upon the expiration of the fifteenth (15th) Lease Year as determined by the provisions of the Lease.

3. Tenant has an option to extend the term of the Lease for three (3) periods of five (5) years each, on the same terms and conditions as stated in the Lease.

4. This Memorandum of Lease is subject to all of the terms, conditions and understandings set forth in the Lease, which are incorporated herein by reference and made a part hereof, as though copied verbatim herein. In the event of a conflict between the terms and conditions of this Memorandum of Lease and the terms and conditions of the Lease, the terms and conditions of the Lease shall prevail.

5. Landlord and Tenant shall not lease or permit the use of space in the Shopping Center for the following (provided that in the event of any conflict or inconsistency between the restrictions set forth in this Paragraph 5 as they may relate to the Premises and the provisions

BK7952PG0528

of Paragraph 7.1 of the Lease relating to Tenant's permitted use of the Premises, the provisions of Paragraph 7.1 of the Lease shall control and govern with respect to the Premises): (i) any bowling alley; (ii) any arcade; (iii) any tavern or bar, except to the extent incidental to a restaurant operated primarily for on-premises consumption; (iv) any health club, spa or gymnasium; (v) any night club or discotheque; (vi) any second hand or surplus store; (vii) any mobile home park or trailer court (except that this provision shall not prohibit the temporary use of construction trailers); (viii) any dumping, disposing, incineration or reduction of garbage (exclusive of appropriately screened dumpsters located in the rear of any building); (ix) any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation, (x) any central laundry or dry cleaning plant or laundromat (except that this prohibition shall not be applicable to on-site service provided solely for pickup and delivery by the ultimate consumer, including nominal supporting facilities); (xi) any automobile, truck, trailer or R.V. sales, leasing, display or repair; (xii) any skating rink; (xiii) any living quarters, sleeping apartments or lodging rooms; (xiv) any veterinary hospital, animal raising facilities or pet shop (except that this prohibition only prohibits a pet shop if it is adjacent to the Premises); (xv) any mortuary; (xvi) any establishment selling or exhibiting pornographic materials; (xvii) any restaurant within Tenant's Protected Area (as defined in the Lease), provided that restaurants which are 2,500 square feet in size or less and do not serve or sell alcoholic beverages shall be permitted within Tenant's Protected Area so long as they are located no closer than fifty feet (50') from the Premises; (xviii) any movie theater within three hundred feet (300') of the Premises; (xix) any separately demised newsstand or magazine rack, regardless of size; (xx) any auto parts store or gas or service station; (xxi) any church, temple, synagogue or other place of worship; (xxii) any auditorium, meeting hall or other place of public assembly (except for the building designated as "Library" on Exhibit B attached hereto); or (xxiii) any use which is a public or private nuisance.

6. So long as Tenant is operating its business in the Premises as a retail book store (subject to Temporary Permitted Closures, as defined in the Lease), but subject to the provisions of Paragraph 7.6 of the Lease, Landlord, and its successors and assigns, shall not operate or permit under any circumstances to be operated within the Shopping Center any other store selling or displaying for sale or rental (i) books, magazines, periodicals and newspapers in print, (ii) books, magazines, periodicals and newspapers on tape, disk, cd-rom and/or any other media or (iii) audio compact discs and other forms of recorded music [collectively, the items described in (i), (ii) and (iii) preceding are referred to herein as the "Exclusive Items"]. The Incidental Sale (as hereinafter defined) of the Exclusive Items in connection with the overall business of another operator or tenant shall not be deemed a violation of this restriction. As used herein, "Incidental Sale" shall mean the lesser of (x) ten percent (10%) of such operator's or tenant's display area and (y) five hundred (500) square feet of such operator's or tenant's display area (inclusive of allocable aisle space). Further, for so long as Tenant is operating a Coffee Shop (as defined in the Lease) in the Premises (subject to Temporary Permitted Closures), Landlord, and its successors and assigns, shall not operate or permit under any circumstances to be operated within the Shopping Center any other Coffee Shop. The restriction contained in the preceding sentence shall not be deemed to preclude another tenant or operator from having, self-contained within its premises, a coffee or espresso bar (even though the same might, but for the

provisions of this sentence, otherwise be considered a Coffee Shop) so long as such operation (a) is not separately demised, (b) operates from an area equal to or less than 1,200 Leasable Square Feet of space, (c) does not have any exterior entrance/exit, (d) does not have any exterior signage (and as used herein, "exterior" shall include not only signage appearing on the exterior of the premises but any signage which, although interior, may be readily seen from the outside) and (e) such operation does not have any exterior seating. And, this restriction against other Coffee Shops shall not be deemed to preclude the operation within the Shopping Center of general restaurant businesses which sell, as a part of their general restaurant operations, coffee and/or coffee-type drinks so long as their annual gross sales of coffee and/or coffee-type drinks do not exceed twenty-five percent (25%) of their total annual gross sales.

7. Landlord hereby gives and grants to Tenant during the term of the Lease, for the benefit of Tenant and Tenant's subtenants, licensees and concessionaires, and their respective employees, contractors, customers, invitees and deliverymen, the right to use all of the Common Areas (as defined in the Lease), in common with Landlord and all other tenants and occupants of the Shopping Center and their respective employees, contractors, assigns, customers, invitees and deliverymen. The rights hereby granted with respect to the Common Areas shall run with and bind the Shopping Center and the land on which it is located, shall be binding upon the Landlord and Landlord's successors in title to all or any part of the Shopping Center, and shall constitute an irrevocable, nonexclusive easement appurtenant to the Premises for the benefit of, and shall be enforceable by, Tenant and its successors and assigns only throughout the term of the Lease.

8. Landlord agrees that, during the term of the Lease, it will not construct or permit to be constructed any building, sign, tower or other structure or improvement (other than those specifically shown to be within the No Build Area on the site plan attached hereto as Exhibit B), or plant any tree or other growing plant, or make any other change whatsoever in the area depicted as the No Build Area on Exhibit B. Notwithstanding the foregoing to the contrary, Landlord shall have the right within the No Build Area to (i) plant trees and other growing plants pursuant to a landscape plan which provides for the uniform distribution of trees throughout the Shopping Center, provided no one tree shall unreasonably interfere with the visibility of Tenant's building signage except as may otherwise be required by applicable governmental authority and (ii) construct other items or amenities customary in first-class retail centers, such as light standards, benches and directional signage, provided the same does/do not unreasonably interfere with access to the Premises or visibility of Tenant's building signage.

9. Landlord shall cause the points of ingress and egress to and from the Shopping Center and adjacent right-of-ways labeled on Exhibit B as "Critical Access Ways" to be constructed, and to remain throughout the term of the Lease, in an open and functioning manner, as shown on said Exhibit B.

10. Throughout the term of the Lease, as the same may be extended, the following restrictions shall encumber and bind the outparcels (collectively, the "Outparcels") shown and labeled on Exhibit B as Retail Buildings 3 and 4: any buildings, pylon or monument signs

constructed on the Outparcels shall be subject to the following restrictions: (1) no more than one building shall be constructed on any Outparcel; (2) no building shall exceed one story in height; (3) no building shall exceed twenty-five (25) feet in height; (4) no building shall have drive-through food or beverage service (but outdoor seating for food or beverage service shall be permitted, subject to the provisions of Paragraph 6 above); (v) the Leasable Square Footage of any building constructed on an Outparcel shall not exceed the floor area therefor set forth on Exhibit B; (vi) each building shall comply with all governmental rules, regulations, ordinances and laws; (vii) any pylon or monument signs erected or constructed on the Outparcels shall not obstruct visibility of the pylon or monument sign identifying the Shopping Center or Tenant; and (viii) Landlord shall not relocate or materially alter the "footprint" of the building on each such Outparcel from that shown on Exhibit B.

EXECUTED as of the date first written above.

LANDLORD:

THE COMMONS AT SUGARHOUSE, L.C.

By: SEE ATTACHED
Name: _____
Title: _____

TENANT:

BARNES & NOBLE BOOKSELLERS, INC.

By: *Mitchell S. Klipper*
Name: MITCHELL S. KLIPPER
Title: EXECUTIVE VICE PRESIDENT

LANDLORD:

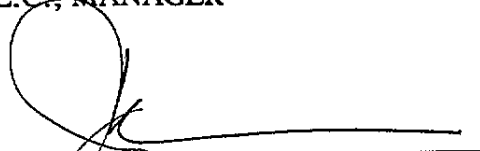
THE COMMONS AT SUGARHOUSE, L.C.

BY: JT COMMONS AT SUGARHOUSE,
L.C., MANAGER

Date executed by Landlord:

MARCA 24, 1998

By:



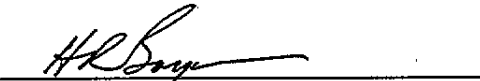
John R. Thackeray, Member

BY: BOYER POST OFFICE PLACE,
L.C., MANAGER

Date executed by Landlord:

2 April 98

By:



H. Roger Boyer, Chairman/Manager

BK7952PG0532

THE STATE OF Utah §
COUNTY OF _____ §

SEE ATTACHED

This instrument was acknowledged before me on the _____ day of _____, 1998, by _____ of The Commons at Sugarhouse, L.C., a Utah limited liability company, on behalf of said limited liability company.

Notary Public in and for the State of _____

My Commission Expires: _____

THE STATE OF NEW YORK §
COUNTY OF NEW YORK §

This instrument was acknowledged before me on the 8th day of April, 1998, by MITCHELL S. KLIPPER, Executive Vice President of Barnes & Noble Booksellers, Inc., a Delaware corporation, on behalf of said corporation.

Jean M. Bollerman

Notary Public in and for the State of New York
My Commission Expires: _____

JEAN M BOLLERMAN
Notary Public, State of New York
No 41-4941170
Qualified in Queens County 98
Commission Expires Aug. 15, 1998

Exhibits:

- "A" - Legal Description of Shopping Center
- "B" - Site Plan of Shopping Center

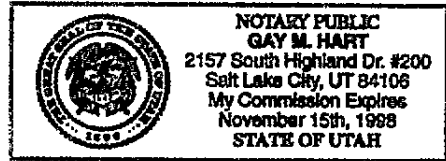
BK7952PG0533

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

This instrument was acknowledged before me on the 2ND day of APRIL, 1998, by H. Roger Boyer, Chairman/Manager for Boyer Post Office Place, L.C. as a Manager of THE COMMONS AT SUGARHOUSE, L.C., a Utah limited liability company, on behalf of said company.

Gay M. Hart
Notary Public in and for the State of Utah

My commission expires:
11-15-98

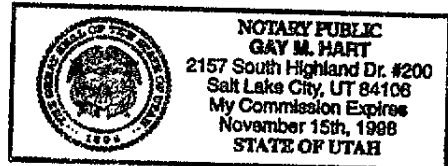


THE STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

This instrument was acknowledged before me on the 24TH day of MARCH, 1998, by John R. Thackeray, Member of JT Commons at Sugarhouse, L.C. as a Manager of THE COMMONS AT SUGARHOUSE, L.C., a Utah limited liability company, on behalf of said company.

Gay M. Hart
Notary Public in and for the State of Utah

My commission expires:
11-15-98



BK7952P60534

EXHIBIT A

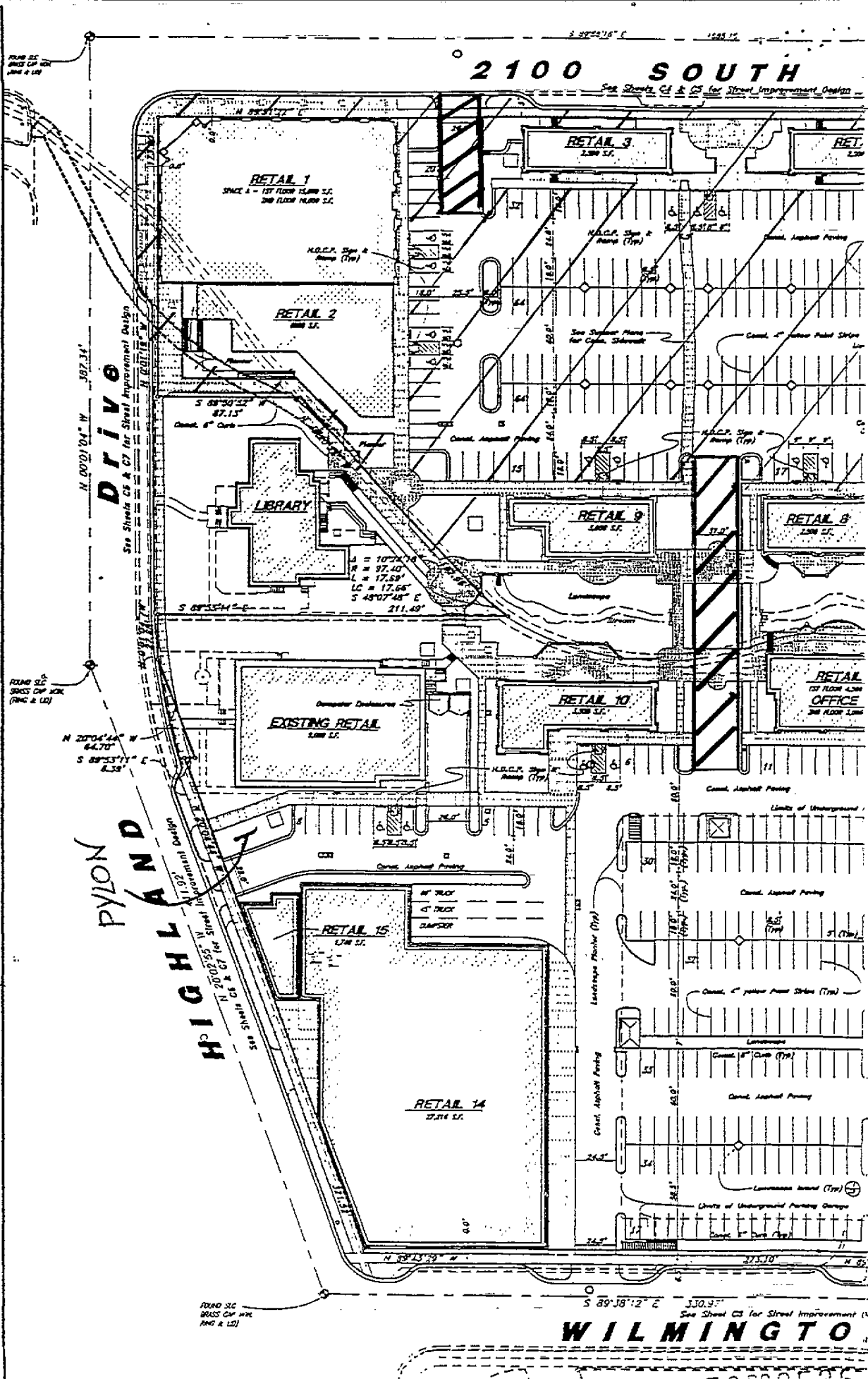
The following legal description is from Survey No. 96127 by McNeil Engineering, Inc. with minor corrections:

Beginning at a point on the East Right-of-Way Line of Highland Drive and South Right-of-Way Line of 2100 South Street, said point being North 89°51'27" East 18.00 feet and South 00°01'04" East 12.00 feet from the Northwest Corner of Lot 9, Block 46, Ten Acre Plat "A" Big Field Survey, and running thence North 89°51'27" East along the South Line of said 2100 South Street 720.199 feet; thence South 00°01'04" East 105.191 feet; thence North 89°58'56" East 4.00 feet; thence South 0°01'04" East 152.310 feet; thence South 89°51'27" West 3.94 feet to a point 21.50 feet West of the East Line of said Lot 9; thence South 0°01'04" East 15.10 feet; thence South 89°51'27" West 57.63 feet; thence South 0°01'04" East 9.78 feet; thence West 133.02 feet; thence South 44°31'00" West 47.29 feet; thence South 03°55'19" West 11.61 feet; thence South 33°11'50" East 86.65 feet; thence East 110.11 feet; thence South 161.885 feet; thence North 88°05'57" East 38.166 feet to the Northeast Corner of Lot 15, Block 8, Union Heights Subdivision; thence South 00°24'08" West along the East Line of said Lot 15, 139.853 feet to a point on the North Line of Wilmington Avenue; thence North 89°42'55" West along the North Line of said Wilmington Avenue 225.00 feet; thence North 89°46'05" West along said North Line 66.061 feet; thence North 89°43'29" West along said North Line 273.104 feet to a point on the East Right-of-Way Line of Highland Drive; thence Northerly along said Easterly Right-of-Way Line the following four courses; North 20°04'44" West 321.519 feet; thence South 89°53'11" East 6.393 feet; thence North 20°04'44" West 64.696 feet; thence North 00°01'04" West 27.680 feet; thence South 89°53'11" East 211.501 feet to a point on the Arc of a 97.404 foot Radius Curve to the right; thence Northwesterly along the Arc of said Curve (Center bears North 36°04'28" East) through a Central Angle of 11°35'10" a distance of 19.696 feet to a point of tangency; thence North 42°20'22" West 162.952 feet; thence South 89°50'52" West 87.135 feet to a point on the East Right-of-Way Line of Highland Drive; thence North 00°01'19" West along said East Right-of-Way Line 173.000 feet to the point of beginning

Contains 9.691 acres

2100 SOUTH

See Sheets C1 & C2 for Street Improvement Design



WILMINGTON

See Sheet C3 for Street Improvement Design

BK 7952 BK 7952 PG 0550 PJ 536

PYLON
TREE

FOUND. SEE
BRDG. SUP. WORK
(SHEETS 1 & 2)

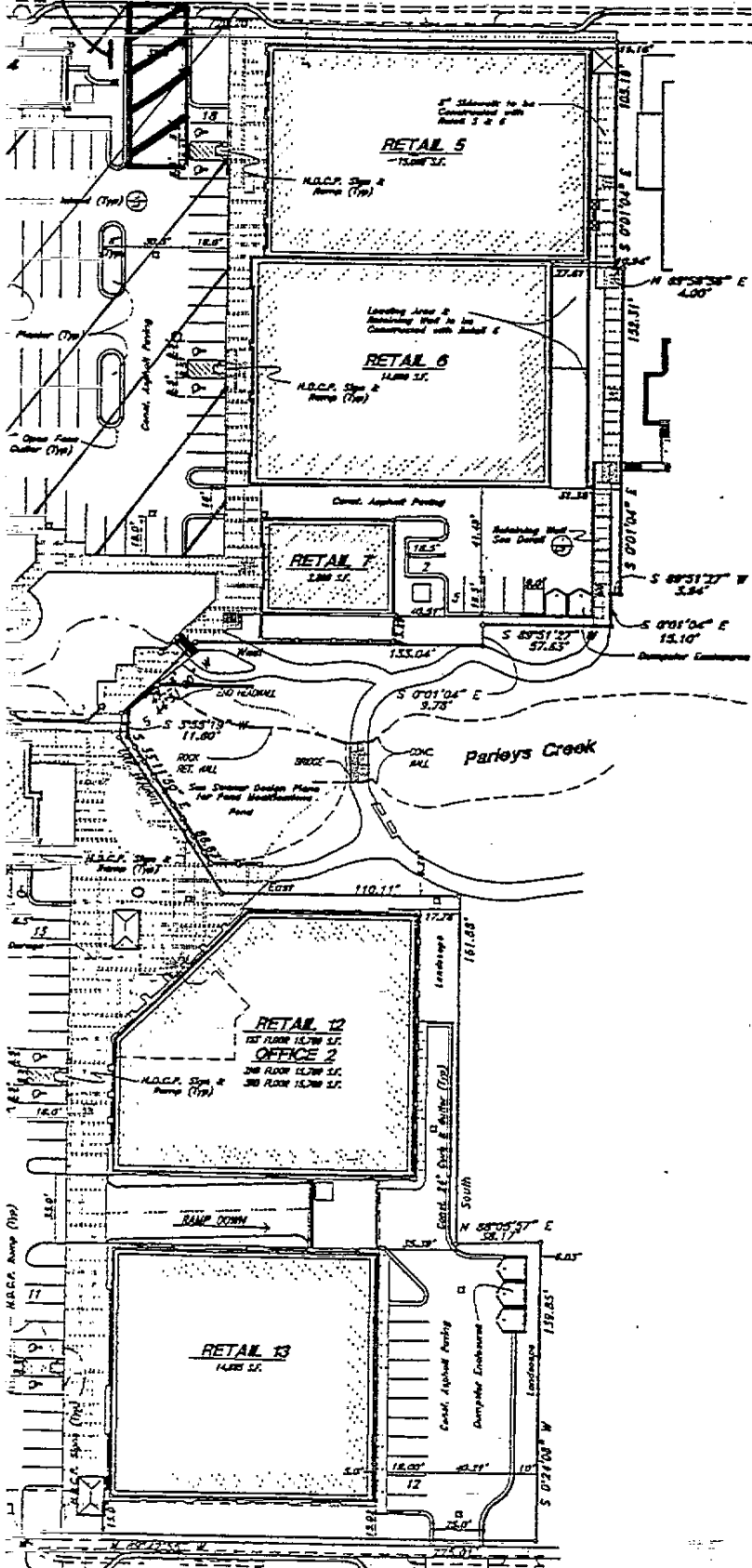


Benchmark:
 1. 2" DIA. IRON PIPE (RIPED)
 2. 4" DIA. IRON PIPE (RIPED)
 3. 6" DIA. IRON PIPE (RIPED)
 4. 8" DIA. IRON PIPE (RIPED)
 5. 10" DIA. IRON PIPE (RIPED)
 6. 12" DIA. IRON PIPE (RIPED)
 7. 14" DIA. IRON PIPE (RIPED)
 8. 16" DIA. IRON PIPE (RIPED)
 9. 18" DIA. IRON PIPE (RIPED)
 10. 20" DIA. IRON PIPE (RIPED)

NO BUILD AREA



CRITICAL ACCESS WAYS



- Notes:**
1. See Structural Design Plans for Design & Detail of Footwork, Walls, Truss Connections, Laminated Walls, Etc.
 2. Building Slovicata, Ramps, Compactors, Drains & Retention are Building Contractor's Responsibility (See Arch. Plans). Timing of Building Construction will vary. If Building Slovicata are not in place at time of Paving Extend Footwork 1" beyond Future Slovicata Edge.
 3. Slovicata designated 3, will require a Paved Horizontal Driveway, Stop, Wheel Stop, and Ramp (See Detail).
 4. Fire Lane Markings and Signs to be installed as directed by the Fire Marshal.
 5. See Horizontal Control Plans for Detailed Dimensions of Site Improvements.
 6. Aisle Markings, Directional arrows, and Stop Bars will be painted at each driveway as shown on plans.
 7. Each driveway will require a 36" Reinforced Stop Sign to be installed.

Site Area = 422140 sq. ft. or 9.601 ac.
 489 Stalls - Surface
 183 Stalls - Underground
 41 Stalls - Offsite Parallel Parking
 693 Total Parking Stalls

EXHIBIT B

PRIVATE ENGINEER'S NOTICE TO CONTRACTORS

The Contractor agrees that he shall assume sole and complete responsibility for job site conditions during the course of construction of this project, including safety of all persons and property that this requirement shall apply continuously and not be limited to normal working hours and that the contractor shall defend, indemnify, and hold the owner and the engineer harmless from any and all liability, real or alleged, in connection with the performance of work on this project, excepting for liability arising from the sole negligence of the owner or the engineer.

AVENUE

Site Plan		The Commons at Sugarhouse	
2100 South and Highland Drive Salt Lake City, Utah			
GREAT BASIN ENGINEERING - SOUTH 2870 North Redwood Blvd., P.O. Box 10747 Salt Lake City, Utah 84116		SCALE: 1" = 30'	DATE: 4 Dec. 1997
		DESIGNER: kb	REVISIONS:
		97-34	13 Feb. 1998
			G1

DK7952PG0537