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ENT 58459:2005 PG 1 of 15
RANDALL A. COVINGTON
UTAH COUNTY RECORDER
2005 Jun 01 10:25 am FEE 42.00 BY SS
RECORDED FOR FIRST AMERICAN INSURANCE AG

UPON RECORDING, RETURN TO: :
:
SMITH'S FOOD & DRUG CENTERS, INC. :
Attention: Director of Real Estate Legal Services :
1550 South Redwood Road :
Salt Lake City, UT 84104 :
Telephone: (801) 974-1400 :

FOURTH AMENDMENT TO CROSS-EASEMENT AGREEMENT

THIS FOURTH AMENDMENT (this "Fourth Amendment") is entered into as of the day of SEPTEMBER, 2002, among the following:

A. **BOYER OREM ASSOCIATES, LTD.**, a Utah limited partnership ("Boyer"), whose address is 127 South 500 East, Suite 100, Salt Lake City, Utah 84102-1906;

B. **SHOPKO STORES, INC.**, a Wisconsin corporation (formerly a Minnesota corporation, dba UVALKO ShopKo Stores, Inc.) ("ShopKo"), whose address is 700 Pilgrim Way, P.O. Box 19060, Green Bay, Wisconsin 54307-9060;

C. **SMITH'S FOOD & DRUG CENTERS, INC.**, a Delaware corporation, successor in interest by merger to Smith's Food King Properties, Inc., a Utah corporation, whose address is 1550 South Redwood Road, Salt Lake City, Utah 84104; and

D. **BROOKSTONE PROPERTIES, L.L.C.**, a Utah limited liability company, whose address is 80 East Center Street, Orem, Utah 84058.

FOR THE SUM OF TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the undersigned agree as follows:

1. Definitions. As used in this Fourth Amendment, each of the following terms shall have the meaning indicated:

1.1 "Agreement" means the Cross-Easement Agreement, recorded September 8, 1989, as Entry No. 26572 in Book 2626 at Page 123 of the Official Records, and re-recorded February 15, 1990, as Entry No. 4760 in Book 2665 at Page 869 of the Official Records, as amended by (a) Addendum to Cross-Easement Agreement, recorded September 8, 1989, as Entry No. 26573 in Book 2626 at Page 184 of the Official Records, (b) First Amendment to Cross-Easement Agreement, recorded February 14, 1991, as Entry No. 6165 in Book 2764 at Page 50 of the Official Records, (c) Second Amendment to Cross-Easement Agreement, recorded

October 12, 1995, as Entry No. 69315 in Book 3790 at Page 187 of the Official Records, and (d) Third Amendment to Cross-Easement Agreement (the "Third Amendment"), recorded April 11, 2001, as Entry No. 33819-2001 of the Official Records. The Agreement covers the Entire Parcel.

1.2 "Entire Parcel" means the real property located in Utah County, Utah, described as follows:

Parcel 1:

Lots 3 and 4, Plat "A", BOYER RETAIL CENTER SUBDIVISION, Orem, Utah, according to the official plat thereof on file in the Office of the Utah County Recorder.

Parcel 2:

Lot 2, Plat "B", BOYER RETAIL CENTER SUBDIVISION, Orem, Utah, according to the official plat thereof on file in the Office of the Utah County Recorder.

Parcel 3:

Lots 1 and 2, Plat "C", BOYER RETAIL CENTER SUBDIVISION, Orem, Utah, according to the official plat thereof on file in the Office of the Utah County Recorder.

1.3 "Official Records" means the official records of the Utah County Recorder, Utah.

2. Purpose of Amendment. The undersigned comprise all owners of the Entire Parcel as of the date of this Fourth Amendment. The undersigned desire to amend the Agreement as set forth in this Fourth Amendment. Boyer's mortgagee, Sun Life Assurance Company of Canada, a Canadian corporation, has consented to this Fourth Amendment, as set forth below.

3. New Site Plan. The site plan attached as Exhibit "5.1" to the Third Amendment is deleted in its entirety and is replaced with the new site plan (the "New Site Plan") attached to this Fourth Amendment.

4. Square Footage Limitation. The square footage limitation set forth in the second sentence of Paragraph 4 of the Third Amendment is increased from 4,000 square feet of ground floor area to ~~4,000~~ 6,000 square feet of ground floor area, in the location shown on the New Site Plan.

Handwritten initials and scribbles on the left margin.

5. Retail Shops Expansion. During the period commencing on the date of this Fourth Amendment and expiring on the fifth anniversary of such date (the "Expansion Period"), Boyer may, at its option, elect to expand the Retail Shops area into the area (the "Expansion Area") crosshatched on the New Site Plan, which Expansion Area may not exceed sixty (60) feet by one hundred (100) feet. To accomplish such expansion, Boyer may purchase from ShopKo,

and ShopKo shall sell to Boyer, the Expansion Area for a purchase price equal to its "Fair Market Value," determined as set forth below. The closing shall occur within thirty (30) days after the Fair Market Value is determined in accordance with this Paragraph and any required subdivision of the Expansion Area is completed, which subdivision shall be accomplished by Boyer at its sole cost and expense. ShopKo shall promptly execute any documents, plats or other materials that are reasonably necessary in connection with the subdivision process, as may be requested by Boyer in writing. Within twenty (20) days after Boyer gives ShopKo written notice of Boyer's desire to purchase the Expansion Area, which notice must be given before the expiration of the Expansion Period, ShopKo's then current broker shall give Boyer and ShopKo written notice of such broker's proposed Fair Market Value of the Expansion Area. Boyer shall have ten (10) business days following receipt of such broker's notice to object to such proposed Fair Market Value by giving written notice of such objection to ShopKo. If Boyer fails to so object within such ten (10) day period, such proposed Fair Market Value shall be binding for purposes of this Paragraph (meaning that it shall be the purchase price for the Expansion Area). If Boyer objects to such proposed Fair Market Value within such ten (10) day period by written notice given to ShopKo, Boyer shall retain an appraiser to determine the Fair Market Value of the Expansion Area. If the higher of the Fair Market Values submitted by ShopKo's broker and Boyer's appraiser is within ten (10%) percent of the lower of the Fair Market Values so submitted, the average of the two (2) shall be the binding Fair Market Value for purposes of this Paragraph. If the higher of the Fair Market Values submitted by ShopKo's broker and Boyer's appraiser is more than ten (10%) percent of the lower of the Fair Market Values so submitted, then such broker and appraiser shall mutually select a second appraiser to determine the Fair Market Value and the average of the second appraiser's Fair Market Value and the closest other Fair Market Value (either that of ShopKo's broker or Boyer's appraiser) shall be the binding Fair Market Value for purposes of this Paragraph. Each appraiser shall be an independent, certified MAI appraiser with at least ten (10) years' experience in appraising commercial real estate in the Provo/Orem metropolitan area, and be a member of the American Institute of Real Estate Appraisers. Boyer shall pay for the cost of its appraiser, and the cost of the second appraiser shall be shared equally by Boyer and ShopKo. Boyer and ShopKo shall share equally any escrow fees, ShopKo shall pay for the cost of a standard coverage policy of title insurance in the amount of the purchase price and recording charges shall be customarily allocated. Any taxes and assessments on the Expansion Area shall be prorated between Boyer and ShopKo as of the closing date. The Expansion Area shall be sold on an "as-is" basis and conveyed by special warranty deed, free and clear of all liens, encumbrances other than those related to municipal and zoning ordinances, public utility easements of record, general taxes for the year of closing, and the Agreement, as amended by this Fourth Amendment.

6. General Provisions. Except as set forth in this Fourth Amendment, the undersigned ratify and affirm the Agreement in its entirety, and the Agreement shall remain in full force and effect. This Fourth Amendment shall be governed by, and construed and interpreted in accordance with, the laws (excluding the choice of laws rules) of the State of Utah. Each exhibit referred to in, and attached to, this Fourth Amendment is an integral part of this Fourth Amendment and is incorporated in this Fourth Amendment by this reference. This Fourth Amendment shall inure to the benefit of, and shall be binding on, the undersigned and their respective successors and assigns.

THE UNDERSIGNED have executed this Fourth Amendment on the respective dates set forth below, to be effective as of the date first set forth above.

BOYER OREM ASSOCIATES, LTD.,
by its general partner:

THE BOYER COMPANY, L.C.,
a Utah limited liability company

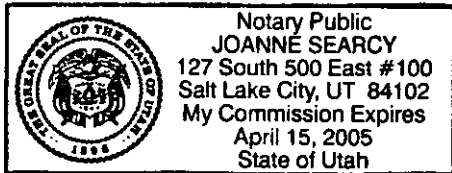
By: *[Signature]*
Its: *[Signature]*
Date: *9-5-02*

State of *Utah*
County of *Sack Lake*

On *September 5, 2002*, *Kem Gardner* personally appeared before me,

who is personally known to me
 whose identity I proved on the basis of _____
 whose identity I proved on the oath/affirmation of
Jessica Clark, a credible witness

to be the signer of the above instrument, and he/she acknowledged that he/she signed it.



[Signature]
Notary Public

My commission expires *April 15, 2005*

SHOPKO STORES, INC., (Signature)
a Wisconsin corporation

By: Larry Jr

Its: UP REAL ESTATE

Date: 9-9-02

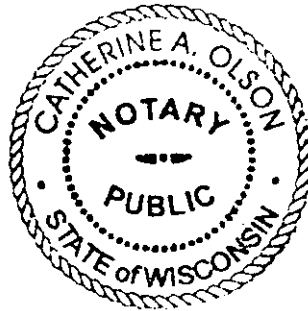
By: Juan A Bucka

STATE OF Wisconsin)
: ss.
COUNTY OF Brown)

The foregoing instrument was acknowledged before me this 9th day of September, 2002, by Larry Zebe & Susan Bucka, the UP Real Estate & Assistant Secretary of ShopKo Stores, Inc.

Catherine A. Olson
Notary Public
Residing at: Green Bay, Wisconsin

My Commission Expires:
5-25-03



SMITH'S FOOD & DRUG CENTERS, INC.,
a Delaware corporation

By: Wade S. Williams

Its: S. Vice President.

Date: 9/17/02

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

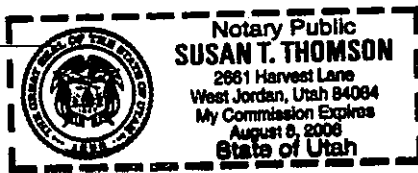
The foregoing instrument was acknowledged before me this 17th day of SEPTEMBER, 2002, by WADE S. WILLIAMS the SR. VICE PRESIDENT of Smith's Food & Drug Centers, Inc.

Susan T. Thomson

Notary Public
Residing at: SALT LAKE COUNTY, UT

My Commission Expires:

8-8-06



BROOKSTONE PROPERTIES, L.L.C.,
a Utah limited liability company

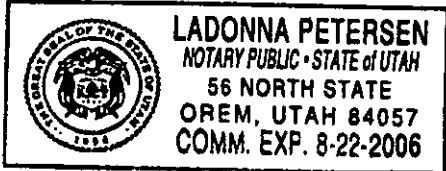
By: Kevin V. Blown

Its: Owner

Date: 10-02-02

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

The foregoing instrument was acknowledged before me this 2 day of October, 2002, by Kevin V. Blown, the owner of Brookstone Properties, L.L.C.



Ladonna Petersen
Notary Public
Residing at: Orem, Utah

My Commission Expires:
8/22/06

CONSENT
[Sun Life Assurance Company of Canada]

THE UNDERSIGNED, SUN LIFE ASSURANCE COMPANY OF CANADA, a Canadian corporation ("Sun Life"), consents to the foregoing Fourth Amendment to Cross-Easement Agreement. (Sun Life currently holds, among other instruments, a deed of trust recorded June 16, 1994 as Entry No. 50255 in Book 3469 at Page 413 of the official records of the Utah County Recorder)

SUN LIFE ASSURANCE COMPANY OF CANADA, a Canadian corporation

By Stephen Pierangeli

Its STEPHEN PIERANGELI

Date PROPERTY INVESTMENTS OFFICER

STATE OF Massachusetts
COUNTY OF Norfolk : ss.

BY: William S. Mercer
PROPERTY INVESTMENTS OFFICER

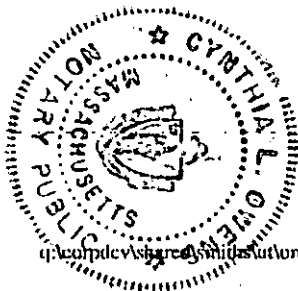
The foregoing instrument was acknowledged before me this 1 day of September 2004 by Stephen Pierangeli, the Property Investments Officer of Sun Life Assurance Company of Canada. LAND WILLIAM S. MERCER OFFICER

[Signature]
Notary Public
Residing at: Wellesley Hills, MA

My Commission Expires:

March 25, 2005

Cynthia L. Owens
NOTARY PUBLIC
My commission expires Mar. 25, 2005



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FL OREM RETAIL, LLC.,
a Utah ~~corporation~~ *limited liability co.*

By: [Signature]

Its: Manager

Date: 10-11-02

By: [Signature]

Its: Manager

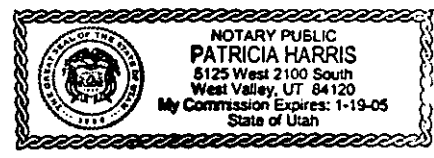
Date: 10-11-02

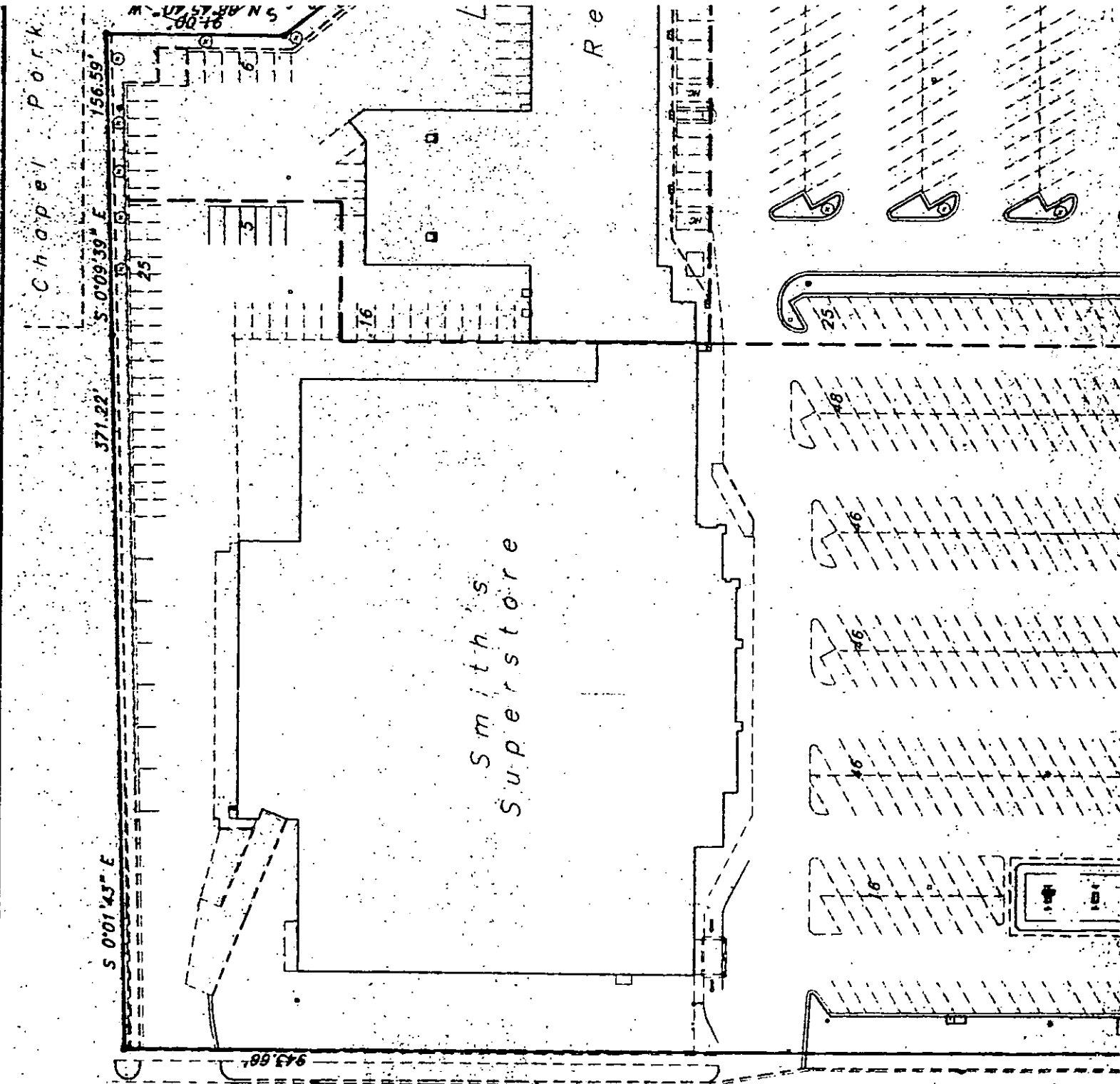
STATE OF Utah)
 : ss.
COUNTY OF Salt Lake)

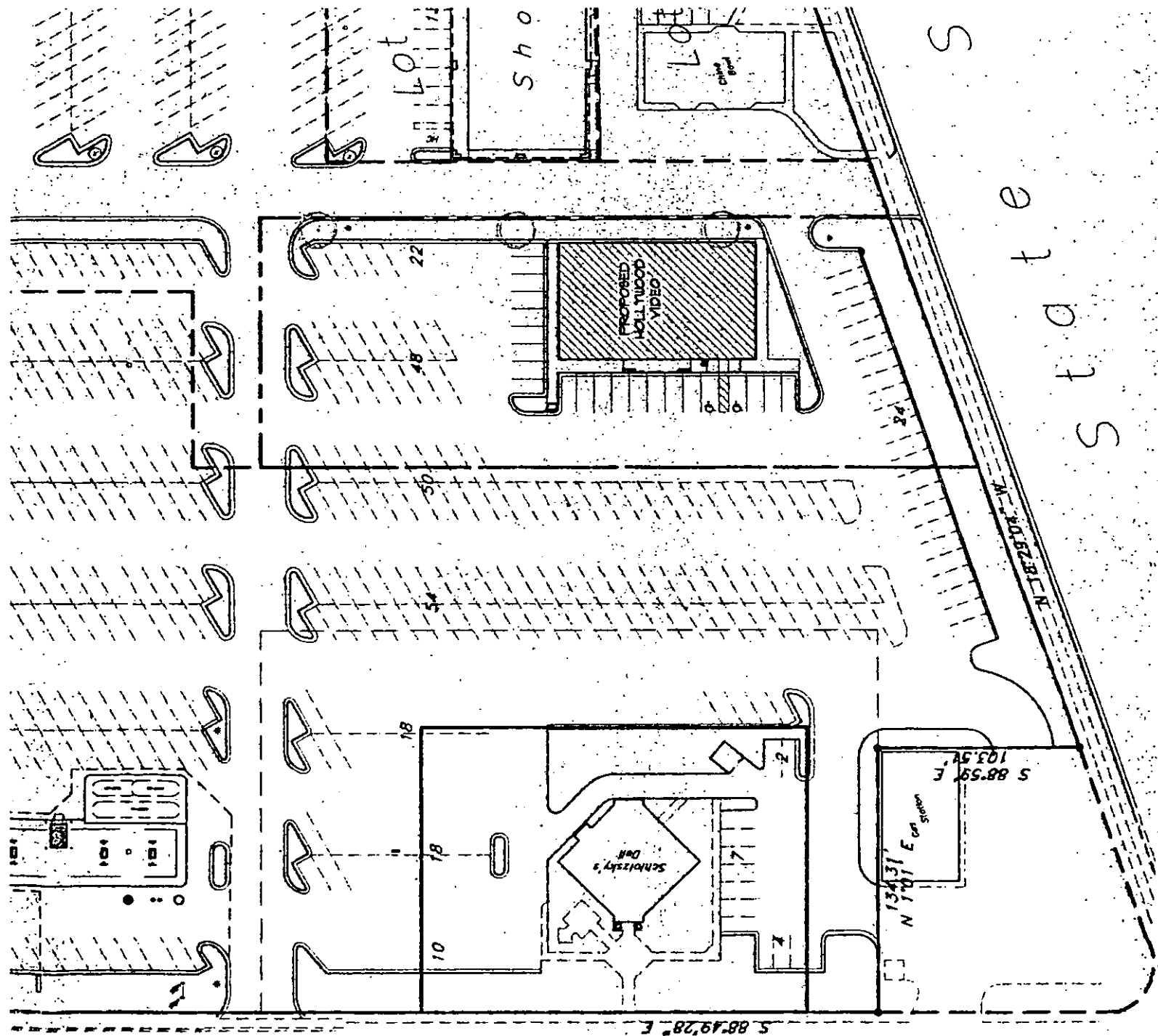
The foregoing instrument was acknowledged before me this 11th day of October, 2002, by ~~Robert A. Furstenberg~~ Bryson Kouchia the Managing Members of **FL Orem Retail, LLC.**

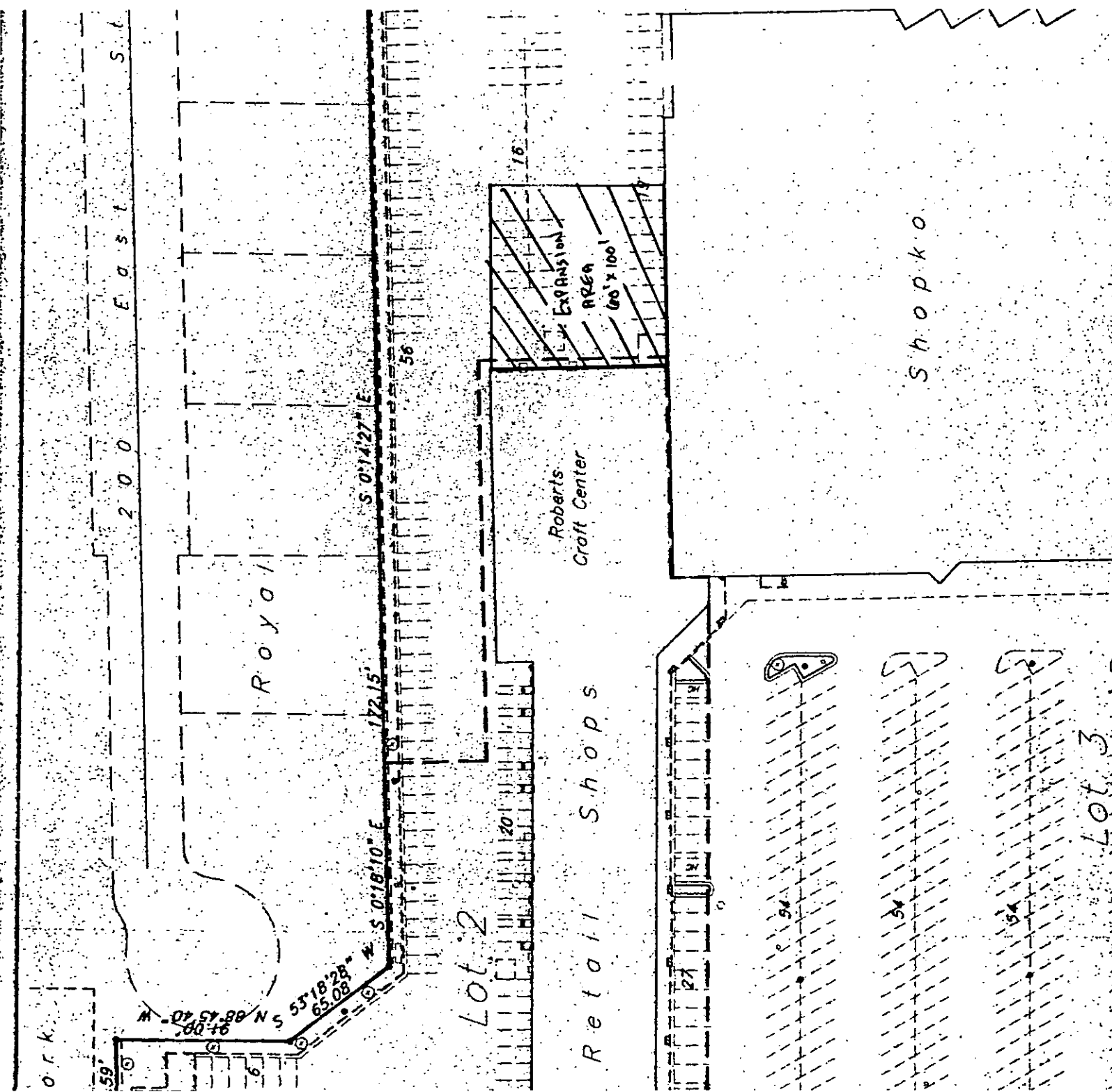
[Signature]
Notary Public
Residing at: Salt Lake County

My Commission Expires:
01/19/05









O.R.K.
59'
6

200 EAST

Royol

S 0° 14' 27" E 56'

S 0° 18' 10" E 172.15'

Lot 2

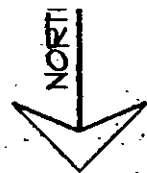
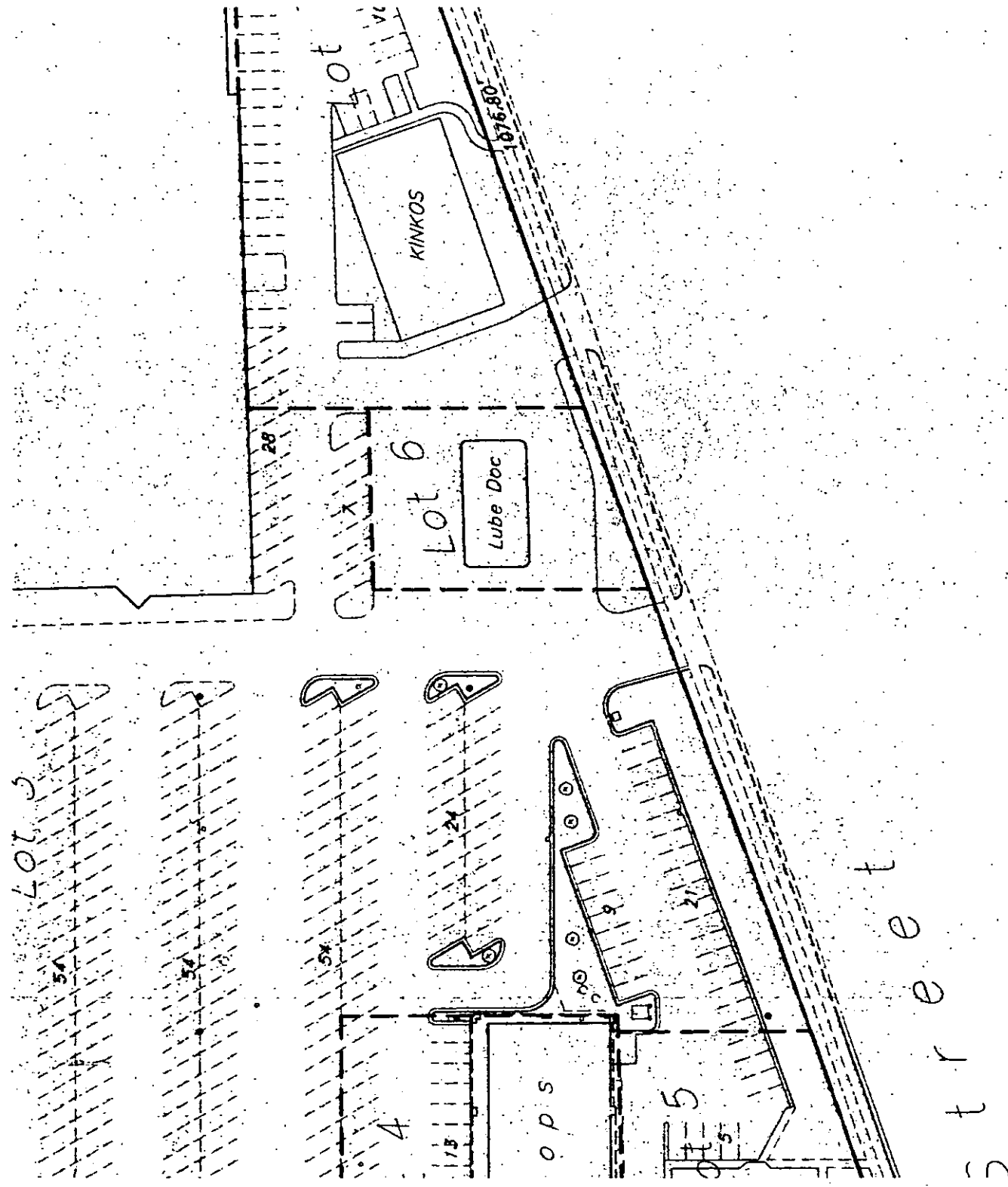
Roberts
Craft Center

EXPANSION
AREA
60' x 100'

Retail Shops

Shopko

Lot 3



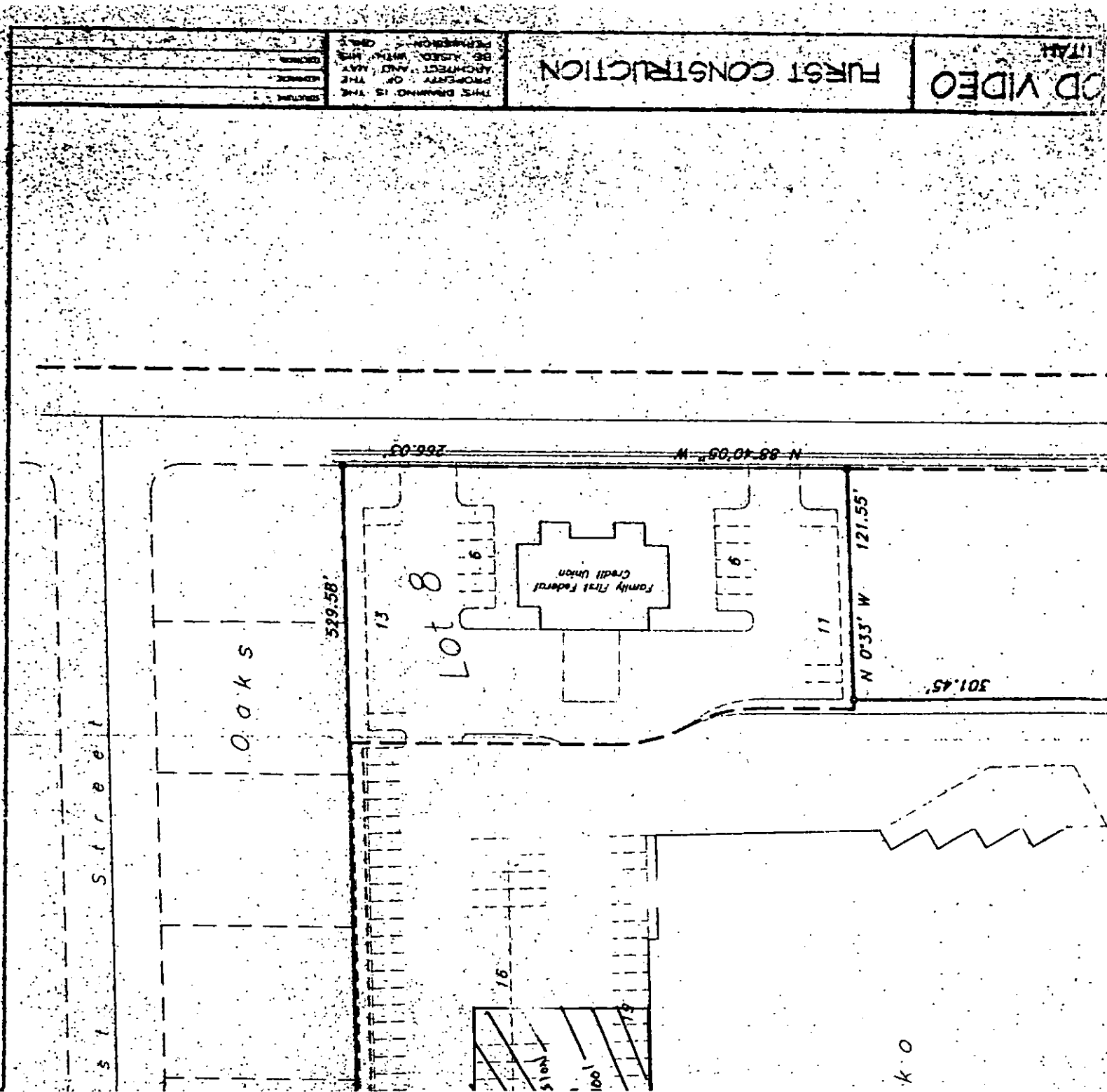
OVERALL SITE PLAN
SCALE: 1" = 50'-0"

OD VIDEO

FIRST CONSTRUCTION

THIS DRAWING IS THE
PROPERTY OF THE
PROJECT AND MAY
BE USED WITH THE
PERMISSION OF THE
DRAWER.

DATE: _____
SCALE: _____
SHEET: _____



58-2
10/6/07
6DR
26-06-07
10/11/07
JOHN WILHITE ARCHITECT HOLLY
2101 WILLOWBICK DR. SANDY, UTAH

