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NANCY WORKMAN
RECORDER, SALT LAKE COUNTY, UTAH
FOUNDERS TITLE
REC BY: B ROME DEPUTY - WI

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NANCY WORKMAN
RECORDER, SALT LAKE COUNTY, UTAH
FOUNDERS TITLE
REC BY: D KILPACK DEPUTY - WI~~

This Instrument was Prepared by and after recording should be returned to:

Katten Muchin & Zavis
525 W. Monroe Street
Suite 1600
Chicago, IL 60661-3693
Attn: Andrew D. Small

**FIRST AMENDMENT TO
GRANT OF RECIPROCAL EASEMENTS,
DECLARATION OF COVENANTS RUNNING WITH THE LAND AND
DEVELOPMENT AGREEMENT**

This FIRST AMENDMENT TO GRANT OF RECIPROCAL EASEMENTS, DECLARATION OF COVENANTS RUNNING WITH THE LAND AND DEVELOPMENT AGREEMENT (this "First Amendment") is made and entered into as of this 16 day of May, 1997 by and among MERVYN'S, a California corporation ("Mervyn's"), MACERICHI SOUTH TOWNE LIMITED PARTNERSHIP, a California limited partnership ("Developer"), and DILLARD USA, INC., a Nevada corporation ("DUSA").

RECITALS

A. Mervyn's and South Towne Investors Limited Partnership, an Illinois limited partnership ("South Towne") have previously entered into that certain Grant of Reciprocal Easements, Declaration of Covenants Running with the Land and Development Agreement dated as of October 21, 1993 (the "REA") and recorded on October 21, 1993 in the Salt Lake County Recorder's Office as Document Number 5634889, pursuant to which South Towne and Mervyn's set forth a general plan for the common development, use and operation of a shopping center developed on property owned by South Towne and Mervyn's. South Towne has conveyed all of its right, title and interest in and to said shopping center to Developer.

B. Simultaneously with the recordation of this First Amendment, Developer is conveying to DUSA a portion of said shopping center and, in connection therewith, Developer, DUSA and Mervyn's desire to add DUSA as a party to the REA and to otherwise amend the REA on the terms and conditions hereinafter provided for.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows effective as of the date hereof:

I. **Definitions.** All capitalized terms which are used herein but which are not otherwise defined herein shall have the meanings ascribed to such term in the REA.

** Being re-recorded to correct Legal Description of Developer Parcel, B-1, and Legal Description of DUSA Parcel, B-1-1.

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II. Amendment to REA. Effective as of the date hereof, the REA is hereby amended as follows:

1. Site Plan. The Site Plan attached as Exhibit A to the REA is hereby deleted in its entirety and the Site Plan attached as Exhibit A-1 hereto is hereby substituted therefor. All references in the REA to the Site Plan shall mean the Site Plan attached hereto as Exhibit A-1.

2. Developer Parcel. The legal description of the Developer Parcel set forth on Exhibit B attached to the REA is hereby deleted in its entirety and the legal description of the Developer Parcel set forth on Exhibit B attached hereto is hereby substituted therefor. All references in the REA to the Developer Parcel shall mean the Developer Parcel legally described on Exhibit B attached hereto and made a part hereof.

3. DUSA Parcel.

A. The following is hereby added to the end of Recital B on page 4 of the REA:

DUSA is the owner of that certain parcel of real property located in the City of Sandy, County of Salt Lake, State of Utah, designated as the DUSA Parcel on the Site Plan. Such Parcel shall hereinafter be referred to as the "DUSA Parcel" and is more particularly described in Exhibit B-1 hereto, it being understood that the DUSA Parcel shall be treated as if the real property comprising the same had never been a part of the Developer Parcel.

B. The REA is hereby amended by adding as Exhibit B-1 thereto the legal description of the DUSA Parcel set forth on Exhibit B-1 attached hereto and made a part hereof.

4. Defined Terms. Section 1.1 on page 4 is hereby deleted in its entirety and the following is hereby substituted therefor: "1.1. Defined Terms. Each reference in this Agreement to any of the terms identified in the captions for each of the following Sections 1.2 through 1.31 shall have the meaning set forth below for each such term".

5. Definition of Accounting Period. Section 1.2 is hereby deleted in its entirety and the following is hereby substituted therefor:

1.2. Accounting Period. Each calendar year during the term of this Agreement commencing January 1, except that the first Accounting Period for each of Mervyn's and DUSA shall commence on the date upon which such Party opens its respective

store for business to the public and end on December 31 of the year in which such date falls, and if this Agreement terminates pursuant to any provision hereof on a date other than December 31, the last Accounting Period shall end on such termination date.

6. **Definition of Barricade Criteria.** The following is hereby added as the last sentence of Section 1.6 on page 5 of the REA:

Furthermore, such criteria shall not be modified or changed without the prior written approval of DUSA, which approval shall not be unreasonably withheld, except that no such modifications or changes shall apply to shop space fronting onto "DUSA Court" (as said area is identified on the Site Plan) without the prior written consent of DUSA, which approval may be withheld in DUSA's sole and arbitrary discretion.

7. **Definition of Common Area.** The following is hereby added as the last sentence of Section 1.8 on page 5 of the REA: "All portions of the DUSA Parcel other than Gross Floor Area contained within buildings located in the Building Area shown on the Site Plan, and related building canopies, support columns, pilasters, overhangs and footings and appurtenant building truck loading or delivery docks or areas, truck tunnels, ramps and wells, is and shall remain Common Area for all purposes of this Agreement."

8. **Definition of Court.** The following is hereby added as the last sentence of Section 1.10 of page 6 of the REA: "Reference to the 'DUSA Court' shall refer to the Court adjacent to the DUSA Parcel shown on the Site Plan and identified as 'DUSA Court'."

9. **Definition of Owning Major.** The definition of Owning Major contained in Section 1.19 on page 7 of the REA is hereby deleted in its entirety and the following is hereby substituted therefor: "Each of Mervyn's and DUSA and their respective successors in interest as a Party hereunder determined in accordance with Article 12 hereof."

10. **Definition of Parcels.** The first sentence of the definition of Parcels contained in Section 1.20 on page 7 of the REA is hereby deleted and the following is hereby substituted therefor: "The Mervyn's Parcel, the Developer Parcel and the DUSA Parcel."

11. **Definition of Parking Area.** The following is hereby added as the last sentence of Section 1.21 on page 7 of the REA: "All portions of the DUSA Parcel other than Gross Floor Area contained within buildings located in the Building Area shown on the Site Plan, and related building canopies, support columns, pilasters, overhangs and footings and appurtenant building truck loading or delivery docks or areas, truck tunnels, ramps and wells, is and shall remain Parking Area for all purposes of this Agreement."

12. **Utility Easements.** The period at the end of Section 2.2(c) on page 9 of the REA is hereby deleted and the following is hereby added to the end of said section: "; and (iii) no such utilities and installations, which must be located above the surface of the Common Area, shall be placed upon the DUSA Parcel without the prior written consent of DUSA, which consent may be withheld in DUSA's sole and absolute discretion."

13. **Comfort and Convenience.** The period at the end of Section 2.2(e) on page 9 of the REA is hereby deleted and the following is hereby added to the end of said section: "and further provided that no such minor comfort and convenience facilities shall be located on the DUSA Parcel or in the DUSA Court without the prior written consent of DUSA, which consent may be withheld in DUSA's sole and absolute discretion."

14. **Temporary Construction Activity.** The last three lines of Section 2.2(f) on page 9 of the REA are hereby deleted and the following is hereby added to the end of the said section:

approved by Developer and, (A) if located north of "Mervyn's Site Line" as shown on the Site Plan, Mervyn's (which approval at any time Mervyn's is opened for business in the Shopping Center, may be withheld in Mervyn's sole and absolute discretion), and (B) if located West of "DUSA's Site Line" as shown on the Site Plan, DUSA (which approval at any time DUSA is opened for business in the Shopping Center, may be withheld in DUSA's sole and absolute discretion), subject to all of the other terms of this Agreement.

15. **Duration of Easements (Ingress, etc.).** Section 2.4(e) on page 11 of the REA is hereby deleted in its entirety and the following is hereby substituted therefor:

(e) **Ingress, Etc.** Subject to the provisions of Section 2.6 regarding abandonment and termination, the easements created under Sections 2.2(b), (d), (g) and (l) shall automatically terminate and be extinguished upon the expiration or prior termination of this Agreement pursuant to Section 16.2 as to all portions of the Common Area except that: (i) the easements appurtenant to and for the benefit of the Mervyn's Parcel over, across and through the Common Area shall be perpetual, except that after expiration or prior termination of this Agreement under Section 16.2 each such easement shall be limited solely to the purpose of providing reasonably necessary and convenient access to the Mervyn's Parcel over such Common Area from public streets adjacent to the Shopping Center; (ii) the easements appurtenant to and for the benefit of the DUSA Parcel over, across and through the Common Area shall be perpetual, except that after expiration or prior termination of this Agreement under Section 16.2 each such easement shall be limited solely to the purpose of providing

reasonably necessary and convenient access to the DUSA Parcel over such Common Area from public streets adjacent to the Shopping Center; and (iii) the easements appurtenant to and for the benefit of the Developer Parcel over, across and through the Common Area located on the DUSA Parcel shall be perpetual, except that after expiration or prior termination of this Agreement under Section 16.2, each such easement shall be limited solely to the purpose of providing reasonably necessary and convenient access to the Developer Parcel over such Common Area from public streets adjacent to the Shopping Center.

16. **Additional Grant of Easements.** No party shall grant or otherwise convey an easement or easements of the type set forth in this Article 2 for the benefit of any property not within the Shopping Center.

17. **Commercial Purposes.** The words "and the DUSA Parcel" are hereby amended following the words "Mervyn's Parcel" in Section 3.1(b) on page 15 of the REA.

18. **Allowed Gross Floor Area.** Section 3.3(b) on page 15 of the REA is hereby deleted in its entirety and the following is hereby substituted therefor:

(b) **Allowed Gross Floor Area.** For purposes of this Agreement, the Allowed Gross Floor Area of each Building Area and Future Building Area shall be as follows:

<u>Building Area</u>	<u>Allowed Gross Floor Area</u>
PHASE I	
DEPARTMENT STORE ZCMI	192,000
DEPARTMENT STORE JCPENNEY	100,237
MALL SHOP SPACE	<u>184,000</u>
SUBTOTAL	<u>476,237</u>
PHASE II	
DEPARTMENT STORE MERVYN'S	85,000
MALL SHOP SPACE	<u>40,000</u>
SUBTOTAL	<u>125,000</u>
<u>Future Building Area</u>	
PHASE III	
DEPARTMENT STORE #4	120,000
DEPARTMENT STORE #5	213,000
MALL SHOP SPACE	<u>25,000</u>
SUBTOTAL	<u>358,000</u>

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OUTPARCELS

SCHLOTSKY'S DELI	OUTPARCEL #1-A	See Notes "A" and "B"
HOMETOWN BUFFET	OUTPARCEL #1-B	See Notes "A" and "B"
CHILIS	OUTPARCEL #2-A	See Notes "A" and "B"
FUTURE RETAIL	OUTPARCEL #2-B	See Notes "A" and "B"
FUTURE RETAIL	OUTPARCEL #3-A	See Notes "A" and "B"
FUTURE RETAIL	OUTPARCEL #3-B	See Notes "A" and "B"
PIER ONE IMPORTS	OUTPARCEL #4	See Note "A"
TGI FRIDAY	OUTPARCEL #5-A	See Notes "A" and "B"
VILLAGE INN		
RESTAURANT	OUTPARCEL #5-B	See Notes "A" and "B"
BENNETT'S		
BARBEQUE	OUTPARCEL #6-A	See Notes "A" and "B"
FUTURE RETAIL	OUTPARCEL #6-B	See Notes "A" and "B"
CINEPLEX	OUTPARCEL 7	See Note "A"

Note "A": The Allowed Gross Floor Area for an Outparcel shall be determined by the proposed use and the number of required parking spaces applicable to such Outparcel, determined as provided in Section 7.1, but shall in no event be less than the Gross Floor Area of any building presently located on such Outparcel.

Note "B": Developer may use all or any portion of an Outparcel designated "A" (hereinafter an "A Outparcel") to provide additional parking spaces for the use of the numerically corresponding Outparcel designated "B" (hereinafter a "B Outparcel"), in which event (i) any such additional parking spaces shall be deemed located on the B Outparcel and used to determine the Allowed Gross Floor Area on the B Outparcel and whether the number of required parking spaces on the B Outparcel satisfies the parking requirements of Section 7.1, and (ii) the Allowed Gross Floor Area for the A Outparcel will be reduced to take into account the reduced number of parking spaces remaining available to satisfy the parking requirements of Section 7.1 applicable to the A Outparcel. In no event, however, will the borrowing of parking area from the A Outparcel for the benefit of the numerically corresponding B Outparcel be construed to permit Developer to develop or construct any building on the B Outparcel outside of the Permissible Building Area Limit Line for the B Outparcel as shown on the Site Plan.

Unless and until changed pursuant to Articles 7 and/or 9, no building developed and constructed on any Building Area or Future Building Area shall contain more than the number of square feet of Allowed Gross Floor Area hereinabove specified for such Building Area or Future Building Area.

19. Height Limits. The table contained in Section 3.3(c) on page 16 of the REA is hereby deleted in its entirety and the following is hereby substituted therefor:

<u>Building Area</u>	<u>Maximum Height</u>	<u>Maximum Stories</u>
PHASE I (EXISTING)		
DEPARTMENT STORE ZCMI	46'-0"	TWO
DEPARTMENT STORE JCPENNEY	24'-6"	TWO
MALL SHOP SPACE	41'-0"	TWO
PHASE II		
DEPARTMENT STORE MERVYN'S	44'-0"	TWO
MALL SHOP SPACE	41'-0"	TWO
SUBTOTAL		
<u>Future Building Area</u>		
PHASE III		
DEPARTMENT STORE #4	41'-0"	TWO
DEPARTMENT STORE #5	70'-0"	THREE
MALL SHOP SPACE	41'-0"	TWO
OUTPARCELS		
SCHLOTSKY'S DELI	OUTPARCEL #1-A 35'-0"	ONE
HOMETOWN BUFFET	OUTPARCEL #1-B 35'-0"	ONE
CHILIS	OUTPARCEL #2-A 35'-0"	ONE
FUTURE RETAIL	OUTPARCEL #2-B 35'-0"	ONE
FUTURE RETAIL	OUTPARCEL #3-A 35'-0"	ONE
FUTURE RETAIL	OUTPARCEL #3-B 35'-0"	ONE
PIER ONE IMPORTS	OUTPARCEL #4 35'-0"	ONE
TGI FRIDAY	OUTPARCEL #5-A 35'-0"	ONE
VILLAGE INN		
RESTAURANT	OUTPARCEL #5-B 35'-0"	ONE
BENNETT'S		
BARBEQUE	OUTPARCEL #6-A 35'-0"	ONE
FUTURE RETAIL	OUTPARCEL #6-B 35'-0"	ONE
CINEPLEX	OUTPARCEL 7 40'-0"	ONE

20. Nuisances. The words "and DUSA" are hereby added after the word "Mervyn's" in the ninth line of Section 3.6(a) on page 17 of the REA and the words "and DUSA's" are hereby added after the word "Mervyn's" in the tenth line of Section 3.6(a) on page 17 of the REA.

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21. **Prohibited Operations.** The words "or the DUSA Court" are hereby added after the words "Mervyn's Court" in the fourth line of the Section 3.6(b) on page 17 of the REA.

22. **Certain Promotions.**

A. The words "or the DUSA Building" are hereby added after the words "Mervyn's Building" in the fifth line of Section 3.6(c) on page 18 of the REA, and

B. The following is hereby added as the last sentence of Section 3.6(c) on page 18 of the REA: "No Mall promotion shall be allowed within the DUSA Court."

23. **Employee Parking and Deliveries.** The words "and DUSA" are hereby added after the word "Mervyn's" in the first line of Section 3.7 on page 18 of the REA.

24. **Rules and Regulations.** The words "or DUSA, as applicable" are hereby added after the word "Mervyn's" in all places that they appear in Section 3.8(a) on page 19 of the REA.

25. **No Barriers.** The words "and DUSA" are hereby added after the word "Mervyn's" in the fourteenth line of Section 3.9 on page 19 of the REA.

26. **Signs and Shopping Center Name.** The words "and DUSA" are hereby added after the word "Mervyn's" in all places that they appear in Section 3.10(a) and Section 3.10(b) on pages 19 and 20 of the REA.

27. **DUSA Opening Covenant.** Subject to all of the limitations contained in the DUSA Allocable Share Agreement, DUSA shall, subject to Articles 8 and 10 and Section 16.6 of this REA open the DUSA Building for business to the general public on or prior to October 11, 1997 as a retail department store in at least 75 percent of the Gross Floor Area of the DUSA Building.

28. **Certain Building Eneroachments.** The words "or otherwise pursuant to this Agreement" are hereby added after the word "Section 4.4" in the second line of Section 4.4(f) on page 27 of the REA.

29. **Indemnity and Insurance.** The following is hereby added as the final sentence of Section 4.8(e) on page 32 of the REA. "Notwithstanding any provisions of this REA seemingly to the contrary, the terms and provisions of this Section 4.8(e) shall apply to DUSA with respect to the DUSA Parcel".

30. **Operation and Maintenance.** The following is hereby added as Section 5.1B of the REA:

5.1B Notwithstanding anything contained herein to the contrary, DUSA shall be obligated hereunder to cause the Common Area located on the DUSA Parcel (hereinafter referred to as the "DUSA Common Area") to be maintained and operated to the standards required of Developer with respect to the balance of the Common Area under this Agreement. The provisions of this Article 5 shall apply to DUSA in the same manner as they would otherwise apply to Developer (other than the provisions of Section 5.5 with respect to assumption of certain obligations by Mervyn's with respect to Mervyn's Primary Parking Area). Developer and DUSA shall cooperate and assist each other in the maintenance and operation of the Common Area in order to maintain and repair the entirety of the Common Area in accordance with the provisions of this Article 5.

31. Cost of Operation and Maintenance of Common Areas. The second sentence of Section 5.4 on page 35 of the REA is hereby deleted and replaced with the following: "All Common Area Maintenance Costs shall be borne by Developer (other than with respect to the DUSA Common Area) without cost or expense to either of Mervyn's or DUSA, except with respect to each of Mervyn's and DUSA, to the extent and in the manner provided in and in accordance with provisions of their respective Allocable Share Agreement. All Common Area Maintenance Costs applicable to the DUSA Common Area shall be borne by DUSA, except as set forth in the DUSA Allocable Share Agreement and in any event without cost or expense to Mervyn's.

32. Repair of Damage to Common Area other than Mall.

A. The words "and DUSA" are hereby added after the word "Mervyn's" in the 12th line of Section 5.7(a) on page 36 of the REA.

B. The following is hereby added as the last sentence of Section 5.7(a) on page 36 of the REA: "Notwithstanding anything contained herein to the contrary, DUSA shall be responsible to restore, repair or rebuild any damaged or destroyed Common Area located on the DUSA Parcel to the same standards and otherwise in compliance with the terms of this Section 5.7(a) as if DUSA were Developer with respect thereto".

33. Payment of Property Taxes.

A. The words "and DUSA" are hereby added after the word "Mervyn's" in the sixth line of Section 6.1 on page 37 of the REA.

B. The words "and/or the DUSA Parcel" are hereby added after the words "Mervyn's Parcel" in the eighth line of Section 6.1 on Page 37 of the REA.

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C. The words "or DUSA" are hereby added after the word "Mervyn's" in both instances in which such word appears in the last line of Section 6.1 on page 37 of the REA.

34. **Parking Ratio.**

A. The eighth line of Section 7.1 on page 37 of the REA is hereby deleted and replaced with the following: "Restaurant Uses and Fast-Food Restaurant Uses: 10.0, and (iii) Office Uses: 2.0. So long as a theater is located in the Outparcel".

B. The following is hereby added at the end of Section 7.1 on page 37 of the REA: "From and after the date upon which DUSA or any other Occupant of the DUSA Parcel opens the building constructed thereon for business to the general public, the DUSA Parcel shall contain in and upon the Parking Area located on the DUSA Parcel not less than four and 75/100 (4.75) parking spaces (for standard size American automobiles, as distinct from compact) for each one thousand (1,000) square feet of Gross Floor Area within the DUSA Parcel".

35. **Changes in Common Area.**

A. The following is hereby added after the words "Mervyn's sole and absolute discretion" in the ninth (9th) line of Section 7.2 on page 37 of the REA:

No change which makes any of the changes identified in (i), (ii) or (iii) above or which alters or modifies the ring road, Common Area on the DUSA Parcel, Building Areas or Future Building Areas, or the DUSA Site Line, all as shown on the Site Plan, or the DUSA Court, shall be made without DUSA's prior written consent which consent may be withheld in DUSA's sole and absolute discretion.

B. The words "and DUSA" are hereby added after the words "Mervyn's" in the last line of said Section 7.2.

C. The following is hereby added following the end of Section 7.2 on page 37 of the REA: "Notwithstanding anything contained in this Agreement to the contrary, DUSA may not make any change to the Common Area located on the DUSA Parcel (other than Common Area located on any Building Area) without the prior written approval of Mervyn's and Developer each of whom may withhold such approval in its sole and absolute discretion. If and only if DUSA requests and actually receives such approvals, DUSA shall comply with the requirements of this Article 7 with respect to DUSA's approved change."

36. **Procedure for Common Area Change.** The text to Section 7.3 is hereby deleted and replaced with the following:

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Prior to making any change in the Common Area (other than Common Area located on any Building Area), Developer shall submit to Mervyn's and DUSA a written description in reasonable detail of the proposed change, including a revised Site Plan and/or preliminary plans and specifications showing such change in detail and the resulting configuration of the Common Area in the Shopping Center. Each of Mervyn's and DUSA shall in writing either approve or disapprove and make recommendations for change in the plans so submitted within thirty (30) days after their respective receipt thereof. Any disapproval and recommendation for change shall specify with particularity the reason therefor and justify the disapproval or recommendation by reference to the criteria set forth in this Article 7. Any plans so submitted and not disapproved by Mervyn's and DUSA within such thirty (30) day-period shall be deemed approved. In the event either or both of Mervyn's and DUSA disapprove and make recommendations for change, Developer and Mervyn's and/or DUSA shall mutually consult in good faith to establish a final plan for the proposed work. After approval of preliminary plans and specifications, Developer shall submit final plans and specifications (prepared in conformance with the preliminary plans and specifications) for approval pursuant to the procedures set forth above. Except as specified in Section 7.2, no Party shall arbitrarily or unreasonably withhold approval of any plan or recommend changes in a plan which otherwise conforms to the criteria specified in this Article 7. No approval of any plan by Mervyn's and/or DUSA shall constitute assumption of responsibility by Mervyn's and/or DUSA for the accuracy, sufficiency or propriety of the plan or a representation or warranty that the plan calls for construction of economic improvements or improvements which comply with law. No material change shall be made on any work of construction once the plans therefor have been approved as provided in this Article 7, unless the plan for the work as so changed is first approved by the Parties so entitled as provided herein. Nothing herein is intended to modify or amend the terms and provisions of Section 7.2 above granting Mervyn's and Developer the right to withhold approval of any change to the Common Area located on the DUSA Parcel (other than the Common Area located on any Building Area) in their sole and absolute discretion.

37. Additional Criteria Regarding Approval of Common Area Changes.

A. The word "Mervyn's" is hereby deleted from the sixth line of Section 7.4(b) on page 38 of the REA and is replaced with the words "Mervyn's and DUSA".

B. The words "Mervyn's is" in the ninth line of Section 7.4(b) on page 38 of the REA are deleted and replaced with the words "each of Mervyn's and DUSA is".

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C. The following is hereby added after the words "any Common Area" in the nineteenth line of Section 7.4(b) on page 38 of the REA:

In addition to the foregoing requirements (i) and (ii) DUSA may disapprove any plan which proposes construction of altered or additional Common Area or Parking Area if the location or design of the altered or additional Common Area and/or Parking Area will obstruct the view of any building upon the DUSA Parcel, interfere with access to any such building from any Common Area or other Parcel, interfere with the ingress and egress of motor vehicles to, and pedestrian traffic on, any Common Area.

38. Common Area Indemnity. Section 8.1 on page 38 of the REA is hereby deleted in its entirety and replaced with the following:

Developer shall indemnify, defend and hold Mervyn's and DUSA harmless from and against any and all claims, expenses, liabilities, loss, damage and costs, including reasonable attorneys' fees, and any actions or proceedings in connection therewith, incurred in connection with, arising from, due to or as a result of the death of any Person or any accident, injury, loss or damage, caused by reason of any negligence or willful misconduct of Developer, its agents, servants, or employees, to any Person or property as shall occur in or about the Common Area located in the Shopping Center, except (i) for such claims released under Section 8.13 hereof, but only to the extent of such release, (ii) claims resulting from the negligence or intentional misconduct of the Party seeking to be indemnified, or any Occupant of any portion of such Party's Parcel, or the agents, servants, or employees of such Party or Occupant, wherever the same may occur, and (iii) claims which occur on or about the DUSA Common Area except to the extent caused by any negligence or willful misconduct of Developer, its agents, servants or employees. DUSA shall indemnify, defend and hold Developer and Mervyn's harmless from and against any and all claims, expenses, liabilities, loss, damage and costs, including reasonable attorneys' fees, and any actions or proceedings in connection therewith, incurred in connection with, arising from, due to or as a result of the death of any Person or any accident, injury, loss or damage, caused by reason of any negligence or willful misconduct of DUSA, its agents, servants, or employees, to any Person or property as shall occur on or about the DUSA Common Area, except (i) for such claims released under Section 8.13 hereof, but only to the extent of such release, and (ii) claims resulting from the negligence or intentional misconduct of the Party seeking to be indemnified, or any Occupant of any portion of such Party's Parcel, or the agents, servants, or employees of such Party or Occupant, wherever the same may occur.

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39. **Public Liability Insurance.** The following is hereby added as the last sentence of Section 8.3 on page 39 of the REA: "The insurance to be maintained by DUSA pursuant to this Section 8.3 shall cover all of the DUSA Parcel, including all of the Common Area located thereon."

40. **Fire Insurance.** The following is hereby added after the words "Mervyn's Parcel" in the second line of Section 8.4 on page 39 of the REA: ", DUSA shall carry on all buildings and improvements located on the DUSA Parcel".

41. **Damage or Destruction**

A. The section reference "8.6" on page 40 of the REA is hereby deleted and the section reference "8.6A" is hereby substituted therefor. All references in the REA to Section 8.6 shall hereafter mean Section 8.6A or Section 8.6B as the context shall require.

B. The following is hereby added as Section 8.6B of the REA:

8.6B Damage or Destruction to DUSA Parcel. Subject to the provisions of Article 10 with respect to an Appropriation, in the event of any damage or destruction to all or any portion of the building or other improvements contained within the DUSA Parcel, or any portion thereof, whether or not covered by insurance required to be carried by DUSA hereunder, DUSA shall repair such damage or destruction upon the following terms and conditions:

(a) **Damage During Operation Covenant.** If such damage or destruction occurs more than three (3) years prior to the expiration of the DUSA Operating Covenant Period (as set forth in the Allocable Share Agreement between DUSA and Developer), as same may have been extended, then DUSA shall, at its own cost and expense and with all due diligence, restore, repair and rebuild the buildings and improvements so damaged or destroyed in accordance with the applicable requirements of this Agreement and said Allocable Share Agreement.

(b) **Damage or Destruction After Expiration of Operating Covenants.** If such damage or destruction occurs at any time after the time specified in Section 8.6B(a), or after expiration of the DUSA Operating Covenant Period, DUSA shall have the right to either restore, rebuild and reconstruct its building and improvements at its own cost and expense with all due diligence in accordance with the applicable requirements contained in this Agreement and the Allocable Share Agreement and any

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such buildings or improvements shall have the same store entrance locations on the Mall as existed before the event of damage or destruction, or raze the whole or any part of the buildings and improvements within its Building Area.

(c) **Gross Floor Area.** Any buildings and improvements reconstructed hereunder shall, if reconstructed during the DUSA Operating Covenant Period, contain at least the same number of square feet of Gross Floor Area contained therein prior to the event of damage or destruction and shall have the same store entrance locations on the Mall as existed before the event of damage or destruction.

(d) **DUSA Reconstruction.** In the event of any damage or destruction which DUSA is required or has elected to restore, repair, rebuild or reconstruct pursuant to this Section 8.6B, DUSA shall, subject to the provisions of Section 3.4, repair any such damage or destruction and reconstruct its buildings or improvements in accordance with (i) the concept of an integrated Shopping Center, and (ii) the provisions of Article 3 and Section 8.7 and Article 9 of this Agreement. If required to rebuild herein, the proceeds of all insurance shall be used to the extent necessary by DUSA in payment for the restoration and reconstruction and DUSA shall commence restoration and reconstruction as herein provided as soon as possible after receipt of the proceeds from insurance therefor and shall use all due diligence to repair or reconstruct within a reasonable period of time thereafter.

42. **Obligations When Party Need Not Rebuild.** (a) The words "and/or DUSA, as applicable," are hereby added after the words "Mervyn's" in all places that term is used in the second paragraph of Section 8.8(a) on page 41 of the REA.

(b) The words "and/or the DUSA Store, as applicable," are hereby added after the words "Mervyn's Store" in the first sentence of Section 8.8(c) on page 42 of the REA.

(c) The following is hereby added as the last sentence of Section 8.8(c). "Any enclosure of the DUSA Store by Developer hereunder shall be made in accordance with plans and specifications approved by DUSA."

43. **Self-Insurance.**

A. The words "and DUSA" are hereby added after the word "Mervyn's" in the second and third lines of Section 8.10 on page 42 of the REA.

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B. The words "or DUSA, as applicable" are hereby added after the word "Mervyn's" in the fourth and fifth lines of Section 8.10 on page 42 of the REA.

44. **Condemnation of Parking Area.** (a) The words "or West of the DUSA Site Line" are hereby added after the words "Mervyn's Site Line" in the fifth line of Section 10.2 of page 44 of the REA.

(b) The words "the Shopping" are hereby added after the word "in" in the eleventh line of Section 10.2 on page 44 of the REA.

45. **Rights Upon Default.** The following is hereby added to the end of Section 11.1 on page 45 of the REA:

To effectuate the cure of any default by Developer in the performance of its obligations under this Agreement with respect to DUSA Common Area or DUSA Court, DUSA shall have the right to enter upon the Developer Parcel (but not any buildings contained within any Building Area of such Parcel) to perform any necessary work or furnish any necessary materials or services to cure such defaults.

46. **Certain Additional Limitations on Transfer or Assignment.** The following is hereby added to the end of the first sentence of Section 12.5(b) on page 48 of the REA: "and (iii) with respect to DUSA, upon full and final completion and the opening for business of its store constructed on its Parcel as provided herein and in DUSA's Allocable Share Agreement".

47. **Mortgagee Protection.** The following is hereby added as Section 14.3B of the REA:

14.3B Tolling of Operating Covenant Period.

(a) **Obligation of Parcel Mortgagee.** Upon assumption of possession of the DUSA Parcel in the exercise of any remedy granted to a DUSA Parcel Mortgagee (as hereinafter defined) under its DUSA Parcel Mortgage, a DUSA Parcel Mortgagee shall have all of the rights of DUSA and the duty to perform all of DUSA's obligations hereunder, except for the obligation to operate under the name "DUSA," but only for and during the period (the "DUSA Abeyance Period") when it has the right to such possession, and the DUSA Operating Covenant Period shall be extended by the number of days contained in the DUSA Abeyance Period.

(b) **Definitions.** For purposes of this Section 14.3B, the following terms shall have the meanings hereinafter set forth:

(i) **DUSA Parcel Mortgage.** "DUSA Parcel Mortgage" shall mean a transaction in which DUSA executes a deed of trust or mortgage with respect to the DUSA Parcel and all improvements thereon; or sells the DUSA Parcel and all improvements thereon and leases back the DUSA Parcel and all improvements thereon in its entirety and assumes in the leaseback arrangement full responsibility for performance of all obligations to be performed by DUSA hereunder and in connection with such transaction, DUSA obtains funds, repayment of which is secured in whole or in part, or becomes an obligation in whole or in part incurred by DUSA in the transaction in which such deed of trust, mortgage or sale and subleaseback is delivered or consummated and the DUSA Parcel Mortgagee assumes in writing the obligations of DUSA set forth in this Agreement and agrees in writing that, in the event Developer accepts any offer to purchase the DUSA Parcel pursuant to the provisions of the Allocable Share Agreement between DUSA and Developer, and DUSA fails or refuses for any reason to discharge all DUSA Parcel Mortgages in connection with the consummation of the sale of the DUSA Parcel as required by the Allocable Share Agreement, it will release and discharge its DUSA Parcel Mortgage upon the deposit by Developer of the applicable purchase price, plus and minus prorations, into the escrow required by the Allocable Share Agreement, and provided that the escrow trustee is required to, and DUSA agrees that if the escrow instructions do not so provide that Developer is hereby authorized to, make its deposit in such escrow subject to the requirement that the escrow trustee, either (a) hold such purchase price (less all closing costs, including title insurance premiums, escrow fees and transfer and conveyancing, taxes payable by DUSA and, if credited by Developer to DUSA, by Developer) (the "DUSA Net Proceeds") until furnished with (i) a copy of a judgment, decree or order of a court of competent jurisdiction adjudicating who is entitled to the DUSA Net Proceeds, or (ii) a joint order executed by DUSA and all DUSA Parcel Mortgagees or (b) place the DUSA Net Proceeds at the disposal of a court of competent jurisdiction and petition the court to interplead the DUSA and all DUSA Parcel Mortgagees for the purpose of adjudicating who is entitled to the DUSA Net Proceeds.

(ii) **DUSA Parcel Mortgagee.** "DUSA Parcel Mortgagee" shall mean the secured party

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under a DUSA Parcel Mortgage regardless of the type of interest created in such secured party by the DUSA Parcel Mortgage.

48. **Notices.** Section 16.9 is hereby amended by adding the following:

DUSA: Dillard USA, Inc.
c/o Dillard Department Stores, Inc.
P.O. Box 486, 1600 Cantrell Road
Little Rock, Arkansas 72203
Attention of President

with a copy to:

Dillard USA, Inc.
c/o Dillard Department Stores, Inc.
P.O. Box 486, 1600 Cantrell Road
Little Rock, Arkansas 72203
Attention of General Counsel

49. **Exhibit G - Pylon Sign.** The Pylon Sign Criteria attached as Exhibit G to the REA is hereby deleted in its entirety and the Pylon Sign Criteria attached hereto as **Exhibit G-1** is substituted therefor.

50. **Consents.** Each of the Parties hereto represents and warrants either: (i) that it has the full right and authority to enter into this First Amendment without the consent or approval of any other Person, including but not limited to any mortgagee or deed of trust beneficiary with respect to property subject to the REA, or (ii) that it has caused to be attached hereto an executed, recordable original consent from each and every Person from whom such consent is necessary, and that such consent includes a subordination by such Person of any and all interest such Person may have in the property subject to the REA, as amended and supplemented by this First Amendment.

III. **Mervyn's Consent.** Those additional Common Area Plans specifically identified on **Exhibit C** attached hereto and made a part hereof are hereby approved by Mervyn's. Those plans and specifications prepared with respect to the improvements to be constructed by DUSA on the DUSA Parcel and specifically identified on **Exhibit D** attached hereto and made a part hereof are also approved by Mervyn's. The approvals set forth in this Section are subject to the condition that no such approval shall constitute assumption of responsibility by Mervyn's for the accuracy, sufficiency or property of any such plans or specifications or a representation or warranty that such plans or specifications call for construction of economic improvements or improvements which comply with applicable laws.

IV. Miscellaneous

1. Except as modified hereby, the REA shall remain unmodified and in full force and effect.

2. This First Amendment may be executed in any number of counterparts each of which, when taken together, shall constitute an original document.

IN WITNESS WHEREOF, the undersigned have executed this First Amendment as of the date and year first above written.

MERVYN'S, a California corporation

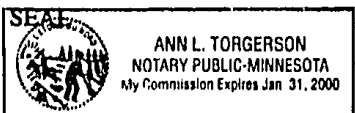
By: *Bob McMahon*
Name: Bob McMahon
Its: Sr. Vice President

STATE OF Minnesota)
) SS
COUNTY OF Hennepin)

On this 32 day of April, 1997, before *Ann L. Torgerson*, a Notary Public in and for said State, personally appeared *Bob McMahon*, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as a *Sr. Vice President* on behalf of the corporation therein named and acknowledged to me that the corporation executed it pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.

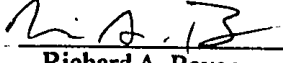
Ann L. Torgerson
Notary Public



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MACERICH SOUTH TOWNE LIMITED PARTNERSHIP,
a California limited partnership

By: MACERICH SOUTH TOWNE GP CORP., a Delaware
corporation, its General Partner

By: 
Name: Richard A. Bayer
Title: General Counsel and Secretary

STATE OF CALIFORNIA)
) SS
COUNTY OF Los Angeles

On April 21, 1977, before me, Linda K. Jones a Notary Public in and for said State, personally appeared Risanda S. Baker, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature Linda K. Jones (Seal)



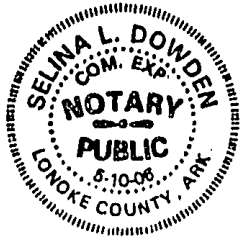
DILLARD USA, INC.,
a Nevada corporation

By: *[Signature]*
Name: JAMES E. DARR, JR
Its: VICE PRESIDENT

STATE OF ARKANSAS)
) SS
COUNTY OF LONOKE)

On this 18 day of March, 1997, before, Selina L. Dowden, a Notary Public in and for said State, personally appeared James E. Darr, Jr., personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as a Vice President on behalf of the corporation therein named and acknowledged to me that the corporation executed it pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.



SEAL

Selina L. Dowden
Notary Public

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CONSENT AND SUBORDINATION TO
FIRST AMENDMENT TO GRANT OF RECIPROCAL EASEMENTS, DECLARATION
OF COVENANTS RUNNING WITH THE LAND AND DEVELOPMENT AGREEMENT

The undersigned, beneficiary under those certain Financing Documents encumbering all or a portion of the Developer Parcel, hereby consents to the within Amendment and hereby subordinates the lien of those certain Financing Documents (as amended, modified or supplemented from time to time) to the provisions of the REA as amended by this First Amendment. The "Financing Documents" consist of: (i) Deed of Trust dated August 1, 1995 and recorded on August 8, 1995 as Entry No. 6137015 at Book 7202, Page 316 of said Official Records; (ii) Assignment of Leases and Rents dated August 1, 1995 and recorded on August 8, 1995 as Entry No. 6137016 at Book 7202, Page 350 of said Official Records; and (iii) Amendment to and Assignment and Assumption of Loan Documents dated March 27, 1997 and recorded on March 28, 1997 as Entry No. 6605596 at Book 7630, Page 129 of said Official Records.

CANADIAN IMPERIAL BANK OF COMMERCE, a
Canadian chartered bank

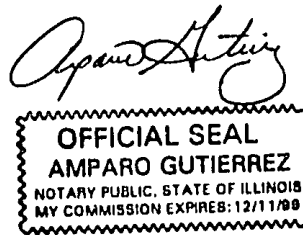
By: Joel Gershkon

~~As Vice President~~

Director, CIBC Wood Gundy
Securities Corp., AS AGENT

STATE OF Illinois)
) SS
COUNTY OF Cook)

On this 24th day of April, 1997, before, Amparo Gutierrez, a Notary Public in and for said State, personally appeared Joel Gershkon, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as AGENT on behalf of Canadian Imperial Bank of Commerce and acknowledged to me that the corporation executed it pursuant to its by-laws or a resolution of its board of directors.



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EXHIBIT A-1

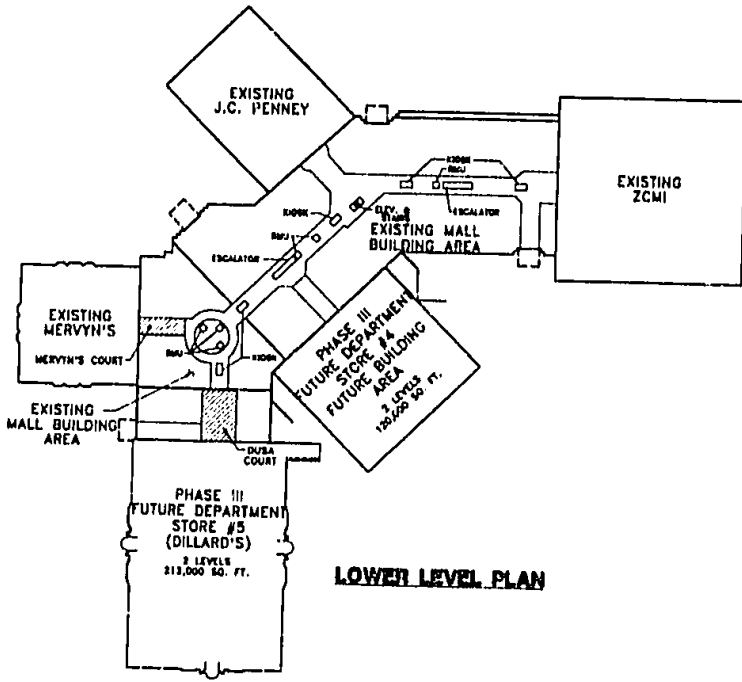
SITE PLAN

(SEE ATTACHED)

A-1-1

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LOWER LEVEL PLAN

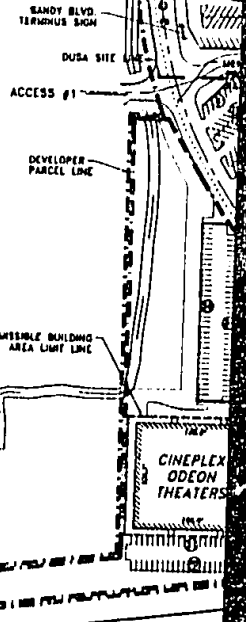
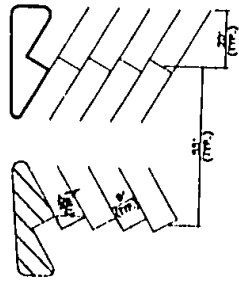
PARKING STALL SUMMARY

USE	ALLOWED STALLS	PROVIDED STALLS
DEPARTMENT STORE (J.C. PENNEY)	18,200 SF	18,200 SF
DEPARTMENT STORE (MERVYN'S)	18,200 SF	18,200 SF
DEPARTMENT STORE (DILLARD'S)	18,200 SF	18,200 SF
MALL EXPANSION	18,200 SF	18,200 SF
FUTURE DEPARTMENT STORE #4	18,200 SF	18,200 SF
FUTURE DEPARTMENT STORE #5 (DILLARD'S)	18,200 SF	18,200 SF
TOTAL	108,000 SF	108,000 SF
EXISTING RESOURCES		
BAR	10,000 SF	10,000 SF
RESTAURANT	10,000 SF	10,000 SF
RESTROOM	10,000 SF	10,000 SF
WALKWAY	10,000 SF	10,000 SF
THEATERS	10,000 SF	10,000 SF
CHILDREN'S PLAY	10,000 SF	10,000 SF
OFFICE	10,000 SF	10,000 SF
TOTAL	100,000 SF	100,000 SF
NET AVAILABLE	8,000 SF	8,000 SF

PARKING PROVIDED BY DUSA PARCEL	1,000
DILLARD'S BUILDING SIZE	213,000 SF
PARKING BALANCE	8,000 SF

PARKING STALL TABULATION

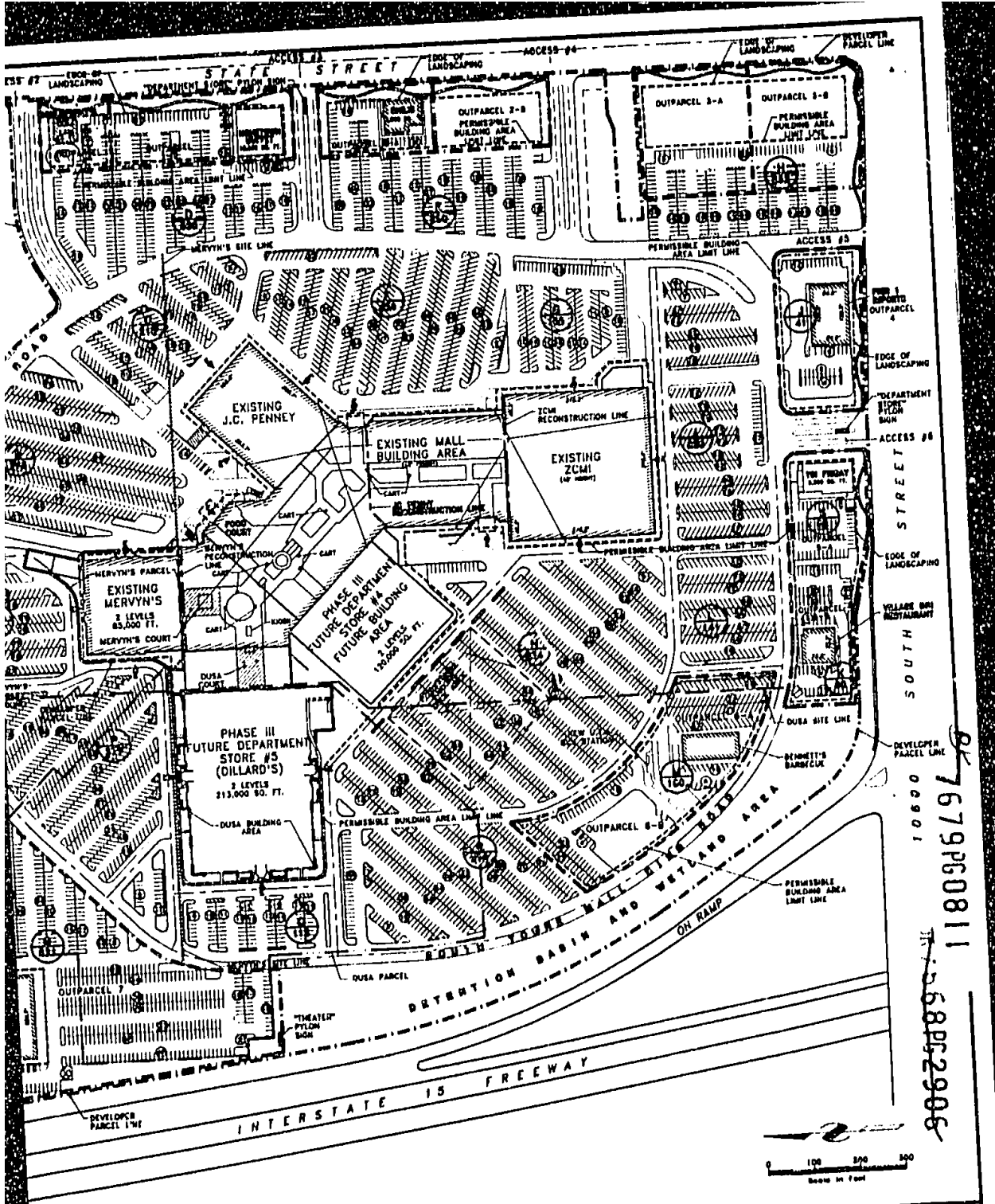
NO.	TYPE	AREA
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NOTE:
THIS DRAWING IS BASED ON THE A.L.T.A. SURVEY PREPARED FOR THE MERVYN'S EXPANSION, SHEET 1 OF 2, DATED 9/21/93.

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LEGEND

- MERVYN'S PRIMARY PARKING AREA BOUNDARY
- MERVYN'S SITE LINE
- MERVYN'S PARCEL BOUNDARY
- DUSA SITE LINE
- DUSA BUILDING AREA
- DUSA PARCEL BOUNDARY
- RECONSTRUCTION LINE
- OUTPARCEL BOUNDARY LINE
- PERMISSIBLE BUILDING AREA LIMIT LINE
- DEVELOPER PARCEL LINE (ENTIRE SITE, LESS MERVYN'S PARCEL & DUSA PARCEL)

#	REV	DATE	DESCRIPTION
1	0	8/1/78	INITIAL PARCEL AND SITE PLAN
2	1	8/15/78	RECON LINE PLANNED, ZCM, MERVYN'S-ENCL.
3	2	8/23/78	DEVELOPER PARCEL RECONSTRUCTION
4	3	8/23/78	LINE RECONSTRUCTION, LAYOUT & DEVELOP. PLAN
5	4	8/23/78	OUTPARCEL & PARKING STALL SUMMARY
6	5	8/23/78	CHANGE OUTPARCEL DESIGNATIONS
7	6	8/23/78	MERVYN'S PARCEL CHANGES
8	7	8/23/78	SUMMARY UPDATE
9	8	8/23/78	MERVYN'S PARCEL CHANGES
10	9	8/23/78	CHANGES TO MERVYN'S EXISTING & DEVELOPER PARCEL
11	10	7/22/79	CHANGES TO MERVYN'S EXISTING & DEVELOPER PARCEL

PROPERTY OWNERS AND DEVELOPMENT, L.P.
SOUTH TOWNE CENTER
EXHIBIT A-1

BRINHAM
 ENGINEERS, ARCHITECTS & PLANNERS
 213 LINDSAY CITY - (405) 588-0888
 DATE: JAN. 14, 1987 PAGE: 8 OF 11

LEGAL DESCRIPTION OF DEVELOPER PARCEL

Lot 1, of that certain SOUTH TOWNE CENTER MALL SUBDIVISION, a subdivision of part of the Northeast quarter of Section 13, Township 3 South, Range 1 West and part of the Northwest quarter of Section 18, Township 3 South, Range 1 East, Salt Lake Base and Meridian, recorded May 14, 1997, in the Salt Lake County Records Office as Entry No. 6644162, as amended by Affidavit dated May 19, 1997, and recorded May 30, 1997, as Entry No. 65112, of Official Records.

B-1

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LEGAL DESCRIPTION OF DUSA PARCEL

Lot 3 of that certain SOUTH TOWNE CENTER MALL SUBDIVISION, a subdivision of part of the Northeast quarter of Section 13, Township 3 South, Range 1 West and part of the Northwest quarter of Section 18, Township 3 South, Range 1 East, Salt Lake Base and Meridian, recorded May 14, 1997, in the Salt Lake County Recorders Office as Entry No. 6644162, as amended by Affidavit dated May 19, 1997, and recorded May 30, 1997, as Entry No. 66712, of Official Records.

B-1-1

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EXHIBIT C

APPROVED COMMON AREA PLANS

TITLE	SHEET #	DATE
First Level Plan		
Second Level Floor Plan		
Mall Elevations		7/23/96
Main Level Floor Plan	A-2.1	
Second Level Floor Plan	A-2.2	

Plans as prepared by Stephen A. Warr & Associates Architects

C-1

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EXHIBIT D

APPROVED DUSA PLANS

TITLE

DATE

Design Elevations
Design Plan I

9/10/96
7/20/96

Plans as prepared by Architecture +

D-1

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EXHIBIT G-1
PYLON SIGN CRITERIA

SEE ATTACHED

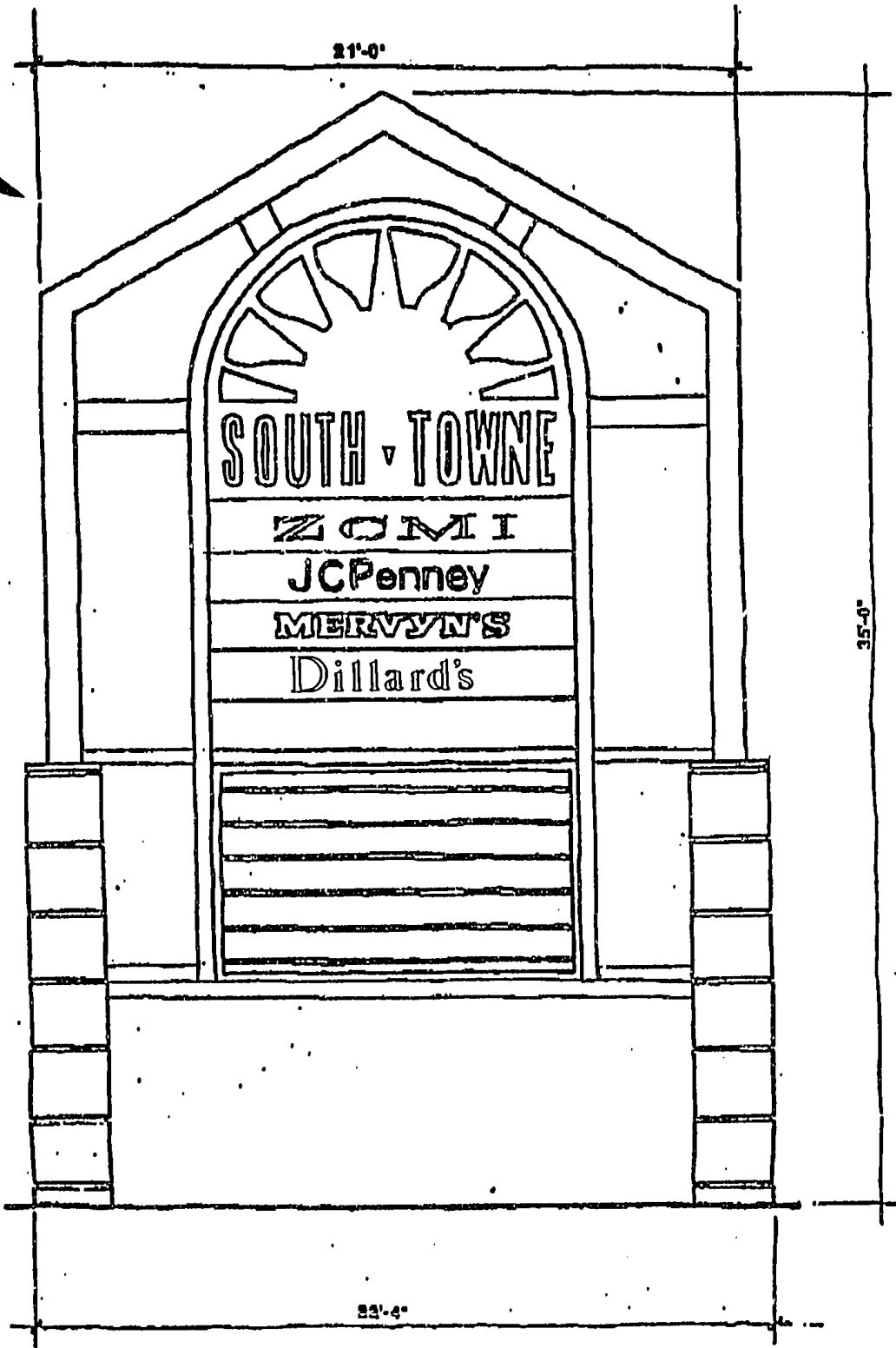
G-1-1

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PYLON SIGN CRITERIA

SOUTH TOWNE CENTER



TOTAL P. 02

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