AGENDA
CITY OF WINDCREST, TEXAS
SPECIAL CITY COUNCIL MEETING

November 5, 2012

Public Hearing
5:00 P.M.

Special City Council Meeting
6:00 P.M.

NOTICE IS HEREBY GIVEN THAT A PUBLIC HEARING / SPECIAL WINDCREST CITY COUNCIL MEETING WILL BE HELD AT WINDCREST CITY HALL, 8601 MIDCROWN, WINDCREST, TEXAS ON THE 05th DAY OF NOVEMBER 2012 STARTING AT 5:00 P.M. DURING THE MEETING THE FOLLOWING SUBJECTS WILL BE CONSIDERED AND THE COUNCIL MAY TAKE ACTION ON ANY OF THE LISTED SUBJECTS.

THE CITY COUNCIL RESERVES THE OPTION TO RECESS THE MEETING DURING THE EVENING OF NOVEMBER 05, 2012 AND TO RECONVENE THE MEETING ON THE FOLLOWING DAY, NOVEMBER 06, 2012 AT 9:00 A.M. AT THE WINDCREST CITY HALL, 8601 MIDCROWN, WINDCREST, TEXAS.

IT IS ANTICIPATED THAT MEMBERS OF OTHER CITY BOARDS, COMMISSIONS AND COMMITTEES MAY ATTEND THE MEETING IN NUMBERS THAT MAY CONSTITUTE A QUORUM OF SUCH OTHER CITY BOARDS, COMMISSIONS AND COMMITTEES, SO THAT NOTICE IS HEREBY GIVEN THAT THE MEETING IS ALSO A MEETING OF THE OTHER CITY BOARDS, COMMISSIONS AND COMMITTEES WHOSE MEMBERS ARE IN ATTENDANCE. THE MEMBERS OF THE OTHER CITY BOARDS, COMMISSIONS AND COMMITTEES MAY PARTICIPATE IN DISCUSSIONS WHICH OCCUR AT THE MEETING, BUT NO ACTION WILL BE TAKEN BY THE OTHER BOARDS, COMMISSIONS AND COMMITTEES WHOSE MEMBERS ARE IN ATTENDANCE.

Ordinance No. 618 (09/20/10), Repealing Ordinance No. 593
At all City Council, City Commission or City Board meetings, the agenda shall include a "citizens to be heard" item. It is suggested that Citizens wishing to speak during this item sign in on the sign up roster prior to the meeting. During "citizens to be heard" comments, each individual may speak on an agenda item or any other matter affecting the city. In addition to the "citizens to be heard" portion of meetings, a person may make comments on agenda items prior to the vote on the agenda item. A member of the public will have a total of six (6) minutes to be heard during a City Council, City Commission or City Board Meeting. This does not include any responses from the body. The six (6) minutes time limit authorized herein may not be transferred to another speaker in whole or in part. The presiding Officer or his/her designee will assign a Time Keeper to each meeting. The Time Keeper will maintain strict compliance of the six (6) minute rule, stopping speakers who exceed the allotted time. As authorized by Section 551.042 of the Texas Government Code, the Presiding Officer may direct a City Official to make: a statement of specific factual information in response to an inquiry made by a member of the public or of the City Council, or; a recitation of existing policy in response to an inquiry made by a member of the public or the City Council. Any deliberation of or decision about the subject of the inquiry shall be limited to a proposal to place the subject on the agenda for a subsequent meeting. Any question posed by a Citizen, Council Member, Board Member or Commission Member for which an answer is not available at a meeting shall be answered by a member of the staff or Presiding Officer at the next regular meeting of the Body, if an answer is reasonably available and prudent. If the information is sensitive, staff will seek advice from the City Attorney.

REQUEST ALL PAGERS AND CELL PHONES BE TURNED OFF, EXCEPT EMERGENCY ON-CALL PERSONNEL. CITIZENS ARE ASKED TO REFRAIN FROM TALKING DURING COUNCIL PROCEEDINGS.

Meeting Chair: please remind each participant in your meeting that they must speak into a microphone; the recording is the Official Minutes of your meeting and all who speak must be recorded. All guest speakers and citizens to be heard must speak from podium. Please interrupt speakers during meeting if you recognize that they are not speaking into microphone and have them do so.

I. Call to Order, Pledge of Allegiance, Invocation and Announcements

II. Public Hearing (5:00 P.M.)

1. City Council will hold a public hearing concerning a recommendation from the Planning and Zoning Commission regarding an amendment of the Zoning Code to include a definition of carport and to prohibit the construction of carports in residential districts of the city after adoption of the zoning amendment.

III. Discuss & Act

1. City Council will review, discuss and may take action on a recommendation from the Planning and Zoning Commission to consider amendment of the Zoning Code to include a definition of carport and to prohibit the construction of carports in residential districts of the city after adoption of the zoning amendment.

IV. Citizens to be Heard on Subsequent and Non-Subsequent Agenda Items

1. A member of the public will have three (3) minutes to discuss non-subsequent agenda items.

2. A member of the public will have six (6) minutes to discuss subsequent agenda items.

3. City Council may discuss and respond to current and past agendas on subsequent and non-subsequent agenda items by citizens to be heard.

V. Presentations (6:00 P.M.)

1. City Council will acknowledge the retirement of James Harley for his years of service to the Windcrest Community. *(Mayor Baxter / John Gretz, CCP requested)*

2. City Council will receive a presentation from Melanie Cawthorn, MS, Director of Marketing & Resource Development with Reaching Maximum Independence, Inc. with information regarding Fiesta

Especial 2013. *(Rafael Castillo, Jr., City Manager / Kayte Brought, Public Affairs / PR / Marketing / Events Specialist requested)*

3. City Council will receive a presentation from Dale Barstow, Vice President, with Municode to recodify the City of Windcrest's Code of Ordinances. *(Kelly Rodriguez, Asst. City Secretary requested)*

4. City Council will receive a presentation from Rudy Rodriguez, Government Affairs with Texas Republic regarding section 4.03 Recyclable Materials of the contract with the City of Windcrest that states - "the recyclable materials may include but are not limited to aluminum, newsprint, glass, metals, plastics or any other materials for which a recycling market is developed". *(Rafael Castillo, Jr. City Manager / Sarah Mangham, Municipal Finance Officer requested)* (Att. 1)

5. City Council will receive a presentation from Robert Colunga, Government Relations and Business Development with WEDC and Kayte Brought, Public Affairs / PR / Marketing / Events Specialist regarding a report in the New York Times titled "Reviatalizing a Dead Mall" dated 10.31.12. (Att. 2)

6. City Council will receive a presentaion from Robert Colunga, Government Relations and Business Development and Kayte Brought, Public Affairs / PR / Marketing / Events Specialist regarding a report by WOAI titled "Brothers Accused of Looting Rackspace's 'Project Castle'" dated 10.29.12 (Att. 3)
   http://www.woai.com/content/troubleshooters/story/Brothers-accused-of-looting-Rackspaces-Project/6dPosA1AoEiX5pIBxHYCRg.cspx

7. Mayor Baxter will present Kelly Rodriguez, Interim Asst. Court Administrator / Court Clerk / Assistant City Secretary the Mayor's Proclamation recognizing Municipal Court Week, for the week of November 5-9, 2012. *(Mayor Baxter and Kelly Rodriguez, Asst. City Secretary / Interim Asst. Court Administrator / Court Clerk requested)* (Att. 4)

8. Kelly Rodriguez, Interim Asst. Court Administrator / Court Clerk / Asst. City Secretary will present City Council the winner of the "Bike Right" poster drawing contest. *(Kelly Rodriguez, Asst. City Secretary / Interim Asst. Court Administrator / Court Clerk requested)*

9. City Council will receive a presentation from Sarah Mangham, Municipal Finance Officer regarding the history of sales tax for the City of Windcrest. *(Mayor Baxter, Rafael Castillo, Jr., Sarah Mangham, Municipal Finance Officer requested)* (Att. 5)

VI. Ordinances

"In conjunction with the first reading of an ordinance, a motion should be made to either "reject the proposed ordinance" or "to forward the proposed ordinance to a subsequent City Council meeting for final adoption at its second reading".

1. City Council will review, discuss and may take action on Ordinance No. 2012-678, an ordinance amending the City of Windcrest Code of Ethics Policy by adopting Section 19 Entitled Purchasing Ethics. *(Rita Davis, Council Member requested)* (Att. 6)

2. City Council will review, discuss and may take action on Ordinance No. 2012-679, an ordinance amending the zoning code by adding regulations authorizing carports under limited circumstances. *(Henry Berman, President of Planning & Zoning Commission / Mike Brenan, City Attorney / Sherry Mosier, EDC Director requested)* (Att. 7)

3. City Council will review, disucss and may take action on Ordinance No. 2012-680, an ordinance amending the zoning code by adding regulations authorizing carports under limited circumstances. *(Henry Berman, President of Planning and Zoning Commission / Michael Brenan, City Attorney / Sherry Mosier, WEDC Director requested)* (Att. 8)

VII. Resolutions

1. City Council will review, discuss and may take action on Resoluiton No. 2012-410 (R), a resolution adopting an amendment to the City of Windcrest Cafeteria Plan by increasing the maximum amount which may be allocated by each participant to $4000.00 per plan year. *(Rafael Castillo, Jr. City Manager / Sarah Mangham, Municipal Finance Officer requested)* (Att. 9)

2. City Council will review, discuss and may take action on Resolution No. 2012-411 (R), a resolution designating the San Antonio Express-News and the Northeast Herald as the newspapers for publication of official notices of the City of Windcrest. *(Kelly Rodriguez, Asst. City Secretary / Sarah Mangham Municipal Finance Officer / Michael McAlear, Interim Alternate City Secretary requested)* (Att. 10)

3. City Council will review, discuss and may take action on Resolution No. 2012-412 (R), a resolution approving the purchase of a weather station and pan / tilt / zoom camera from Weather Metrics, Inc. and authorizing the City Manager to negotiate and execute an agreement for such purchase and an agreement for software maintenance / licensing fee and parts maintenance from Weather Metrics, Inc. *(Jim Shelton, CCP / Robert Colunga, Government Relations and Business Development for WEDC / Al Ballew, Chief of Police / Dan Reese, Fire Chief requested)* (Att. 11)

4. City Council will review, discuss and may take action on Resolution No. 2012-413 (R), a resolution of the City of Windcrest, Texas, making the following changes to the City's elections pursuant to Senate Bill 100, eighty second regular legislature and providing for severability. *(Mayor Baxter requested)* (Att. 12)

VIII. Discuss & Act

1. City Coucil will review, discuss and may take action on recommendations of the Planning and Zoning Commission to address the current teired zoning and implement changes a.k.a. potential "loop holes" in the current zoning districts, specifically Sec 23.9 – 23.1300. *(Henry Berman, P&Z Commission Chairperson / Sherry Mosier, WEDC Director requested)* (Att. 13)

2. City Council will review, discuss and may take action on a request from the Planning and Zoning Commission to begin scheduling joint meetings or workshops with the following but not limited to City Council, WEDC, and Parks & Recreation Commission, in reference to the current conceptual master plan. *(Henry Berman, P&Z Commission Chairperson / Sherry Mosier, WEDC Director requested)*

3. City Council will review, discuss and may take action on use of the cavity/pit that housed the recently removed fuel storage at the Public Works maintenance yard to store recyclable water to fill the street sweeper and landscape irrigation "water buffalo". *(Tom Garcia, Director of Public Works requested)* (Att. 14)

4. City Council will review, discuss and may take action on Windcrest Ball Fields construction and procurement options. *(Rafael Castillo, Jr. City Manager / Andrew Hunt with Raba-Kistner, City Engineer, Jan Leaders, Chairperson of Parks & Recreation requested)* (Att. 15)

5. City Council will review, discuss and may take action on Racker Road easements as follows… *(Mayor Baxter / Rafael Castillo, Jr., City Manager / Sherry Mosier, WEDC Director requested)* (Att. 16)

    A. Agreement(s) regarding reciprocal easments, restrictions, covenants and conditions and memorandum of purchase option
    B. Option Agreement(s)
    C. Termination and Release Agreement(s)
    D. Easement and Use Restriction Agreement(s)
    E. Access Easement Agreement(s)

6. City Council will review, discuss and may take action on possible Senior Discounts for garbage service. *(Mayor Baxter / Sarah Mangham, Municipal Finance Officer requested)*

7. City Council will review, discuss and may take action on possible changes to City Council meeting dates in November and December due to City Holidays. *(Rafael Castillo, Jr. City Manager / Kelly Rodriguez, Asst. City Secretary requested)*

8. City Council will review, discuss and may take action on the Bexar County Water Control and Improvement District #10 Water Conservation and Critical Period Management Plan. *(Michael Brenan, City Attorney requested)*

IX. Executive Session

1. City Council will convene into a closed session for consultation with the city attorney and outside counsel for the city as authorized by section 551.071 (1) (A) of the Government Code regarding pending litigation with Henry Moncada and Lidia Moncada.

2. The City Council will convene into a closed session as authorized by 551.071 (2) of the Texas Government Code to consult with the City Attorney on a water district matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Chapter 551 of the Texas Government Code

X. Discuss & Act

1. City Council will discuss and may take action regarding city litigation with Henry Moncada and Lidia Moncada.

2. City Council will discuss and may take action regarding the Bexar County Water Control and Improvement District #10 Water Conservation and Critical Period Management Plan.

XI. General Announcements & Future Agenda Items Requested

Per Ordinance No. 618, repealing Ordinance No. 593; Section 9: Every agenda shall include an item entry granting a member the opportunity to propose an item for consideration of future agendas for Regular or Special Meetings. Any member may request the inclusion of such items at any meeting.

XII. Adjournment

I, the undersigned authority, do hereby certify that the above Notice of Meeting of the City Council of the City of Windcrest is a true and correct copy of said Notice and was posted on the bulletin board at City Hall of said City in a convenient place to the public and said Notice was posted more than seventy-two hours prior to the meeting on November 05, 2012.

By: Kelly Rodriguez **, Assistant City Secretary**

In compliance with the Americans With Disabilities Act, the City of Windcrest Council Chambers are wheelchair accessible, and accessible parking spaces are available. The City of Windcrest will provide for reasonable accommodations for persons attending City Council meetings. To better serve you, requests should be received 48 hours prior to the meetings. Please contact Kelly Rodriguez, Assistant City Secretary, at 210-655-0022 ext. 2150 or Fax 210-655-8776.

I certify that the attached notice and agenda of items to be considered by the City Council was removed by me from the City Hall bulletin board on the ____ November, 2012.

_____ Title: _____

Allied Waste of San Antonio
Recycling Program

ACCEPTABLE ITEMS

- Corrugated Cardboard
- Boxboard including Food, Beverage, DVD and VCR Boxes
- Computer Print Outs
- Printed white and colored papers (pen and pencil marks are O.K.)
- Clean room paper
- Notebook paper
- Adding machine tape
- File folders (manila, white or pastel colored)
- Carbonless paper and forms (NCR paper)
- Self-adhesive notes
- Card stock (manila or colored)
- Fax paper
- Newspapers and magazines
- Junk mail
- Soft cover books with white pages

- Aluminum Cans
- Plastic PETE (#1) water, soda or beverage bottles
- Plastic HDPE (#2) white and colored beverage and liquid bottles

Staples and paperclips DO NOT have to be removed

ITEMS Not Allowed

- Metal or plastic spiral bound books
- Kitchen and food waste (paper plates, cups and food wrappers)
- Paper towels and tissues
- Carbon paper
- Tear resistant papers (ex. flimsy Federal Express envelopes)
- Water resistant papers (Copy paper wrappers)
- Hanging folders (brown or green Pendaflex folders)
- Pressure sensitive adhesive (Crack and peel labels)
- Plastic Styrofoam plates, cups, food containers
- Glass

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SQUARE FEET

Revitalizing a Dead Mall (Don't Expect Shoppers)

Jennifer Whitney for The New York Times

The entrance of Rackspace's headquarters, converted from a defunct mall in San Antonio.

By KATE MURPHY
Published: October 30, 2012

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LIFE OF PI NOVEMBER 21

SAN ANTONIO — Where others saw an abandoned shopping mall with weeds growing in the parking lot, graffiti on the walls and homeless men camping out in what was once the food court, Graham Weston, chairman and co-founder of Rackspace, a Web hosting company here, envisioned a corporate headquarters.

Enlarge This Image

Jennifer Whitney for The New York Times

A two-story slide takes employees to the food court area.

"I thought, This is going to be awesome!" the infectiously enthusiastic Mr. Weston said of his idea five years ago to move Rackspace's operations to the defunct Windsor Park Mall in northeast San Antonio. "But everybody else pretty much thought I was crazy."

Today, his idea to move his company to the very mall where he got the blue ruffle tuxedo he wore to his junior prom seems more innovative than insane, with 3,200 Rackspace employees keystroking in cubicles set up where retailers like J. C. Penny, Zales, Casual Corner and Piercing Pagoda used to be. The project suggests that there might be hidden opportunities in the nation's glut of dead and dying malls and represents one of the country's largest and quirkiest recycling efforts.

As ruefully documented on the Web site Deadmalls.com, the recession has shuttered scores of enclosed malls in the United States, and estate analysts at the CoStar Group predict that at least 10 percent of the remaining 1,500 malls will fail in the next few years. This is despite recent improvements in retail sales, because shoppers these days are more likely to visit free-standing stores or strip centers than invest time and effort entering and navigating a mall.

Most dead malls are razed, but some have been repurposed, like the Penn-Can Mall in Cicero, N.Y., which now houses several auto dealerships. Malls in Florida, Massachusetts, Michigan, Mississippi, New Jersey and Ohio have become mixed-used spaces, incorporating apartments and unconventional tenants like government offices, churches, medical clinics and satellite university campuses. Rackspace's mall conversion, though, is unique in that it is the exclusive owner and occupant.

Mr. Weston was in a bind in 2007. Rackspace had outgrown the 200,000-square-foot office space it had leased just two years earlier in northwest San Antonio. The growing company, founded in 1998 in a garage apartment, was adding 600 employees a year.

And these employees, who call themselves Rackers, were cramped, cranky and craving a corporate campus like those of their competitors Amazon, Microsoft and Google. Needless to say, they were not enthusiastic at the suggestion that they decamp to a decrepit suburban mall, despite Mr. Weston's assurances that it would be "totally cool."

"A lot of Rackers worked at Foot Locker in the mall, and the last thing they wanted to do is go away to school, get the fancy degree and come back and work at the mall," said Lanham Napier, the chief executive at Rackspace, who admits that he shared their resistance. "I thought Graham was nuts," he said.

There was also some trepidation that the frugal Mr. Weston just wanted cheap office space and wasn't going to do much more than slap a coat of paint on the mall and set up card tables and folding chairs as office furniture.

Despite an estimated net worth of $1.2 billion, Mr. Weston, 48, lives modestly with his wife and three children in a 2,300-square-foot double-wide trailer on the banks of the Guadalupe River just outside of San Antonio. In addition to being a successful dot-com and real estate investor, he descends from British nobility on his mother's side and Canadian grocery magnates on his father's side, whose holdings include Twinings tea, Karo syrup, Fleishmann's yeast, Fortnum & Mason and Selfridges.

Mr. Weston was indeed looking for a good deal, but he also had a grand vision of creating a tech mecca comparable to Austin's so-called Silicon Hills, located 60 miles east of the mall and home to Dell and Hoover's. He hired the New Urbanism pioneer Andres Duany to conceive a master development plan emphasizing diversity, sustainability and walkability.

"I grew up on a cattle ranch not far from the mall, and it was where we came as kids," the boyish and bespectacled Mr. Weston said. "Rackspace desperately needed more space, true, but I wanted us to be leaders in the community, not just squatters."

Undeterred by his employees' opposition, he negotiated to buy the mall for a bargain-basement $27 million. Rackspace also received $72 million in tax abatements and development grants from the State of Texas and the City of Windcrest, a struggling suburb adjacent to the mall. As a precursor to the deal, Windcrest had assumed taxing authority on the property from San Antonio. Windcrest, which has a population of 5,600, had been losing $100,000 in tax revenue annually since the mall closed in 2005.

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"Mr. Weston was a tough negotiator and was certainly taking care of his company," said Ray Watson, who was the executive director of the Windcrest Economic Development Corporation at the time. "We started out offering about half of what they ended up getting, but the good thing is that they took care of the community."

Rackspace agreed to pay $5 million for infrastructure improvements and also promised to make payments in lieu of property taxes to the local school district in an amount equivalent to what the district received when the mall was vacant. The Rackspace Foundation has also donated $2.5 million to the community, money that has gone primarily to the schools.

Moreover, the company has spent in excess of $100 million to transform the mall from an eyesore into an eccentric work space with a $40,000 two-story slide, a chessboard the size of a basketball court and conference rooms named after popular television game shows and breakfast cereals.

Shops and restaurants now encircle the mall, hoping to lure Rackspace employees, whose average salary is $69,000, far above the local average of $37,000. Stratford Land, a real estate development company based in Dallas, purchased 111 acres nearby in January, promising to build restaurants, shops and multifamily housing for Rackers.

"We feel blessed and fortunate to have the right space at the right time for Rackspace," said Rafael Castillo, Windcrest's city manager. "They've given us a sense of stability and opportunity going forward." Windcrest's tax revenue has increased 10 percent every year since Rackspace acquired the mall, and the city expects to be debt-free by 2014. With these results, it's hard to find anyone in the city who begrudges Rackspace's generous incentive package.

Half of the mall's 1.2 million square feet has been transformed so far, primarily into employee work space. The company's data servers are stored in other states and abroad. The mall now has a soaring metallic half-arch over the entry and the interior has locally sourced stone accents, green-colored carpeting, towering ficus trees and additional skylights to give it a more natural feel, but there's no mistaking what the building once was.

"It's hard to church up a mall into anything else," said Adam Hansen, a customer care manager at Rackspace. "No matter what you put in here, you still think, Nope, this was a mall," which is part of its appeal, he said.

Perks include free soda machines, an exercise room, coffee bar, recreation areas for playing video games and meals catered daily by different area restaurants. The company also sets up an enormous white tent in the parking lot every Tuesday and Friday, under which 10 to 12 food trucks park, lending a festival atmosphere at lunchtime.

And in the next few months, Mr. Weston said the company would break ground on a neighborhood park that would encompass several acres surrounding the mall. The design will include gardens, playing fields, jogging trails, a cafe, water features, outdoor art, a performance venue and a dog run.

"Our headquarters is a representation of our values as a company," Mr. Weston said. "We are ambitious, we are expansive, and we are unorthodox."

A version of this article appeared in print on October 31, 2012, on page B6 of the New York edition with the headline: Revitalizing a Dead Mall (Don't Expect Shoppers).

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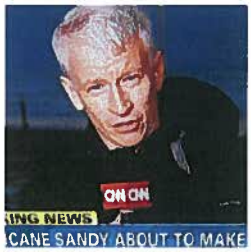

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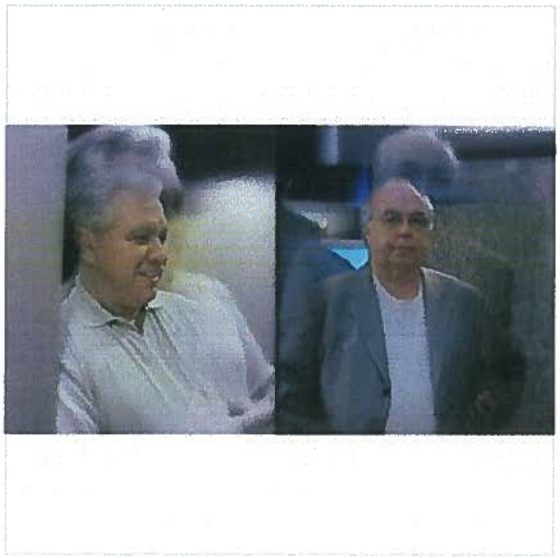
Brothers accused of looting Rackspace's "Project Castle"



Gary and Ronnie Cain are accused of defrauding the web-hosting company and, ultimately, the taxpayers, after money meant to revitalize Windcrest allegedly ended up being spent on travel, jewelry, and a "Sweet 16" party. (WOAI.com)

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Reported by: Jaie Avila

Email: JaieAvila@woaitv.com

Published: 10/29 3:24 pm

Updated: 10/30 2:06 pm

SAN ANTONIO -- It was called "Project Castle" -- a multi-million dollar deal to bring Rackspace to the vacant Windsor Park Mall. Now, two brothers are accused of looting the Castle.

Gary and Ronnie Cain are accused of defrauding the web-hosting company and, ultimately, the taxpayers, after money meant to revitalize Windcrest allegedly ended up being spent on travel, jewelry, and a "Sweet 16" party.

On MTV's reality show "My Super Sweet 16," pampered teenagers frolic at lavish, over-the-top parties thrown for them by their wealthy parents. In an episode from 2009, a San Antonio developer named Gary Cain showers his daughter with designer shoes, her very own hip-hop concert, and a brand new Range Rover.

But the Texas Rangers claim all that opulence was paid for with money that was "fraudulently obtained." It's money the City of Windcrest was counting on to help revitalize the run-down area around Windsor Park Mall

It all started in 2007, when Windcrest scored a big victory, convincing the rapidly-growing web hosting company Rackspace to locate its new headquarters at the mall, which had been empty for two years. There was a problem though: To make the deal work, the city needed a developer to buy up all of the separate sections of the mall and consolidate them into one property. That developer would then turn around and sell the mall to Rackspace for slightly more than the developer bought it for.

Super-dad Gary Cain wanted to be that developer. Fortunately for him, his brother Ronnie Cain happened to be the city manager of Windcrest and the former chief of police.

"Ronnie Cain had the keys to the kingdom. Mayors came and went, but Ronnie Cain was the constant, and the community relied very heavily on him," explained Adriana Biggs, Chief of the White-Collar Crimes Division at the Bexar County District Attorney's office. "He gave Gary the keys to the kingdom. He gave him the access. They needed each other."

Investigators claim the brothers first "misrepresented" the price Gary Cain paid for the mall, thereby inflating the price Rackspace paid him for it by more than $7 million. As part of the deal, Rackspace also agreed to pay for a new road its employees could use to get into the mall. Prosecutors claim Ronnie and Gary Cain fraudulently obtained some of that money.

The design company working on the road was named DPZ. Prosecutors say the Cain brothers purposely created a company with a similar name (DDPZ) and that Ronnie Cain, using his authority as city manager, approved a transfer of $2.8 million of Rackspace's money to the Cain brothers' company. He allegedly showed his boss, former Windcrest Mayor Jack Leonhardt, an invoice that made it look like the money was going to the legitimate contractor.

"That invoice was approved by both Ronnie Cain and the mayor of Windcrest, to be paid for work that had not been done," said Biggs.

According to documents, Ronnie Cain also put $20,000 into the personal account of former Windcrest City Secretary Tracy Freimarck, with whom he was "carrying on a sexual relationship."

It was all eventually uncovered, and in 2010, investigators raided Gary Cain's office, seizing computers and records. The brothers were both indicted.

By then, the money was gone. Investigators claim Gary Cain spent it on jewelry, furniture, trips to the Beverly Hills Hotel, the Four Seasons in New York, a resort in Puerto Rico, and that memorable Sweet 16 party for his daughter.

"Gary Cain was living a nice life, had a beautiful home, was spending a lot of money," Biggs told us.

As for that road the money was supposed to build, Windcrest taxpayers are now having to pay for that.

We tried to talk to former City Manager Ronnie Cain, who is out on bail awaiting trial.

Trouble Shooter Jaie Avila asked, "Can you tell us what happened to the $2.8 million? Don't the people of Windcrest deserve an explanation?"

Cain refused to answer and instead ordered Avila and his crew to get off of his property or he would call police.

His brother Gary also refused to comment as he quickly left a recent court hearing.

The brothers will likely go on trial next year on felony charges, which could land them in jail for life. The two have pleaded not-guilty. They are also being sued by Rackspace and the City of Windcrest. Both brothers have filed lawsuits against the city.

We Recommend

Woman shot, dies after showing up at friend's apartment (WOAI)

Judson assistant principal accused of slapping 7-year-old (WOAI)

Elderly woman slams her BMW through a Target store (WOAI)

Teenager in critical condition after beaten with baseball bat (WOAI)

Holiday Giving: Volunteer Opportunities (WOAI)

More From The Web

This Haircut Is Unforgivable (Nick Mom)

Gasoline Jumps as Shutdowns Crimp Deliveries (Bloomberg)

Mitt's Plan for Israel (MittRomney.com)

Disney's Haunted Mansion for sale (Bankrate.com)

Kim Kardashian's Skirt Causes Outrage (Zimbio)

[?

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Mom Makes $97/Hour Online
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New Policy in Texas
[OCT 2012]: Drivers w/ no DUIs eligible for up to 50% off car insurance
TheFinanceAuthority.com

Buy a link here

Mayor's Proclamation

Municipal Court Week
November 5 - November 09, 2012

Whereas, the Municipal Court of Windcrest, a time honored and vital part of local government, has existed since 1959,

Whereas more people, citizens and non-citizens alike, come in personal contact with municipal courts than all other Texas courts combined, and

Whereas public impression of the entire Texas judicial system is largely dependent upon the public's experience in municipal court,

Whereas, Municipal Judges and court support personnel have pledged to be ever mindful of their neutrality and impartiality, rendering equal service to all, and conform to the standards set by the Canons of Judicial Conduct,

Whereas, the Municipal Courts play a significant role in preserving the quality of life in Texas communities through the adjudication of traffic offenses, ensuring a high level of traffic safety for our citizens,

Whereas, the Municipal Courts serve as the local justice center for the enforcement of local ordinances and fine-only state offenses that protect the peace and dignity of our community,

Whereas, the Municipal Judges and Clerks continually strive to improve the administration of justice through participation in judicial education programs, seminars, workshops and the annual meetings of their state and local professional organizations.

Therefore, it is most appropriate that we recognize the accomplishments of the 916 Texas Municipal Courts, and salute their critical role in preserving public safety, protecting the quality of life in Texas communities, and deterring future criminal behavior,

Now, I Alan E. Baxter, Mayor of the City of Windcrest, do recognize the week of November 5 - November 9, 2012, as *Municipal Court Week*, and further extend appreciation to all Windcrest Municipal Judges and court support personnel for the vital services they perform and their exemplary dedication to our community. **I call upon all residents of Windcrest to join with the City Council in recognizing the vital service they perform and their exemplary dedication to the communities they represent**.

Dated this 5th day of November, 2012.

_____, Mayor

_____, Attest

City Sales Tax

	Months	2009-10	2010-11	Actual City	
7.06%	Oct	150,573.79	161,267.47	171,894.55	
8.01%	Nov	171,689.49	201,624.09	217,458.41	
7.43%	Dec	160,138.57	156,727.20	185,165.30	
7.29%	Jan	183,175.54	160,728.97	198,393.00	
8.82%	Feb	199,104.16	194,101.42	234,851.66	
8.05%	Mar	180,824.08	167,530.89	175,069.04	
8.48%	Apr	188,308.92	181,311.40	225,053.40	
10.17%	May	227,261.71	222,707.69	265,632.72	
8.15%	Jun	191,499.98	187,565.72	212,240.70	
8.06%	Jul	164,941.97	185,860.40	196,624.68	
9.56%	Aug	196,961.57	222,976.77	253,305.39	(30,328.62)
8.90%	Sep	183,453.57	195,995.93	234,915.88	

Months	2009-10	2010-11	Actual City	
Oct	24,460.71	45,642.04	58,491.45	8,355.92
Nov	23,143.82	45,387.80	55,659.31	7,951.33
Dec	21,052.34	43,393.94	50,477.46	
Jan	23,006.00	54,693.00	66,957.46	
Feb	19,421.49	53,853.00	67,036.13	
Mar	19,534.07	52,430.00	70,831.42	
Apr	24,697.76	56,630.00	67,046.00	
May	24,801.43	56,874.68	73,538.49	
Jun	21,206.88	52,779.92	67,231.94	
Jul	45,690.46	55,584.79	69,691.02	
Aug	46,988.32	50,519.72	69,807.35	
Sep	50,269.03	58,491.45	70,000.00	

Months	2009-10	2010-11	Actual City	
Oct	199,495.21	206,909.50	230,386.00	32,912.29
Nov	217,977.13	247,011.89	273,117.72	
Dec	202,243.25	200,121.14	235,642.76	
Jan	206,181.54	215,421.97	265,350.46	
Feb	218,525.65	247,954.42	301,887.79	
Mar	200,358.14	219,960.89	245,900.46	
Apr	213,006.68	237,941.40	292,099.40	
May	252,063.14	279,582.37	339,171.21	
Jun	212,706.86	240,345.64	279,472.64	
Jul	210,632.42	241,445.19	266,315.70	
Aug	243,949.88	273,496.49	323,112.74	49,616.25
Sep	233,722.60	254,487.38	304,915.88	
	2,610,862.50	2,864,678.28	3,357,372.76	
	1,864,901.79	2,046,198.77	2,398,123.40	
	245908.7821	447343.0964	561977.1643	

1,618,993.00	1,598,855.68	1,836,146.24
	$ 1,598,917.49	$ 1,834,686.89
-1%	15%	

City Sales and Use Tax Comparison Summary - October 2012

City	Net Payment This Period	Comparable Payment Prior Year	% Change	2012 Payments To Date	2011 Payments To Date	% Change
Windcrest	308,552.62	230,386.25	33.92%	2,926,778.90	2,441,022.00	19.89%
Alamo Heights	104,051.63	95,864.05	8.54%	901,945.03	815,184.13	10.64%
Balcones Heights	107,277.26	91,543.87	17.18%	1,147,702.52	1,056,398.95	8.64%
Castle Hills	117,550.85	114,282.30	2.86%	946,601.41	908,209.67	4.22%
Cibolo	74,398.89	62,427.22	19.17%	789,959.62	665,936.61	18.62%
Converse	191,965.10	165,288.70	16.13%	2,129,943.59	1,876,107.48	13.52%
Garden Ridge	17,829.23	10,174.72	75.23%	137,574.96	134,005.37	2.66%
Kirby	14,736.38	14,839.95	-0.69%	191,123.40	179,947.12	6.21%
Leon Valley	218,149.77	199,640.02	9.27%	2,047,930.82	1,966,583.90	4.13%
Live Oak	480,337.17	452,973.38	6.04%	5,292,499.74	4,995,718.54	5.94%
Schertz	659,150.30	643,490.70	2.43%	6,556,346.00	5,798,168.67	13.07%
Selma	382,870.70	354,781.79	7.91%	3,767,646.58	3,622,649.83	4.00%
Universal City	278,429.32	269,401.22	3.35%	2,470,591.06	2,290,840.11	7.84%

MUNICIPAL ADVISORY COUNCIL OF TEXAS

Sales Tax Monthly Allocations
Windcrest, City of (General Obligation Debt)

The Charts below contain sales tax revenue allocated each month by the State Comptroller.

For example, the February allocations reflect December sales, collected in January and allocated in February.

View Grid Based on Fiscal Year View Grid With All Years Download To Excel

By Calendar Year

Year	January	February	March	April	May	June	July	August	September	October	November	December	Total
2012	$265,350	$301,888	$245,900	$292,099	$339,171	$279,473	$266,316	$323,113	$304,916	$308,553	$0	$0	$2,926,779
2011	$215,422	$247,954	$219,961	$237,941	$279,582	$240,346	$241,445	$273,496	$254,487	$230,386	$273,118	$235,643	$2,949,782
2010	$206,182	$218,526	$200,358	$213,007	$252,063	$212,707	$210,632	$243,950	$233,723	$206,910	$247,012	$200,121	$2,645,189
2009	$158,336	$198,722	$167,561	$165,220	$221,182	$164,301	$163,470	$185,177	$202,162	$199,495	$217,977	$202,243	$2,245,846
2008	$136,761	$183,115	$179,532	$199,067	$218,688	$179,438	$176,380	$222,370	$172,653	$154,571	$181,895	$165,910	$2,170,380
2007	$132,068	$168,525	$133,985	$139,545	$157,835	$135,470	$132,799	$155,189	$136,596	$131,360	$148,938	$141,034	$1,713,344
2006	$129,578	$171,429	$128,101	$133,106	$153,850	$134,489	$124,581	$136,327	$171,055	$127,894	$280,634	$133,481	$1,824,525
2005	$126,576	$173,011	$156,401	$131,468	$164,528	$131,625	$120,557	$160,306	$130,797	$128,426	$154,620	$136,230	$1,714,544
2004	$132,123	$175,824	$130,600	$136,293	$145,642	$155,617	$154,214	$150,523	$140,470	$119,981	$133,363	$126,916	$1,701,567
2003	$138,269	$191,499	$141,107	$135,330	$161,247	$140,868	$125,696	$155,889	$142,225	$133,950	$138,518	$131,566	$1,736,166

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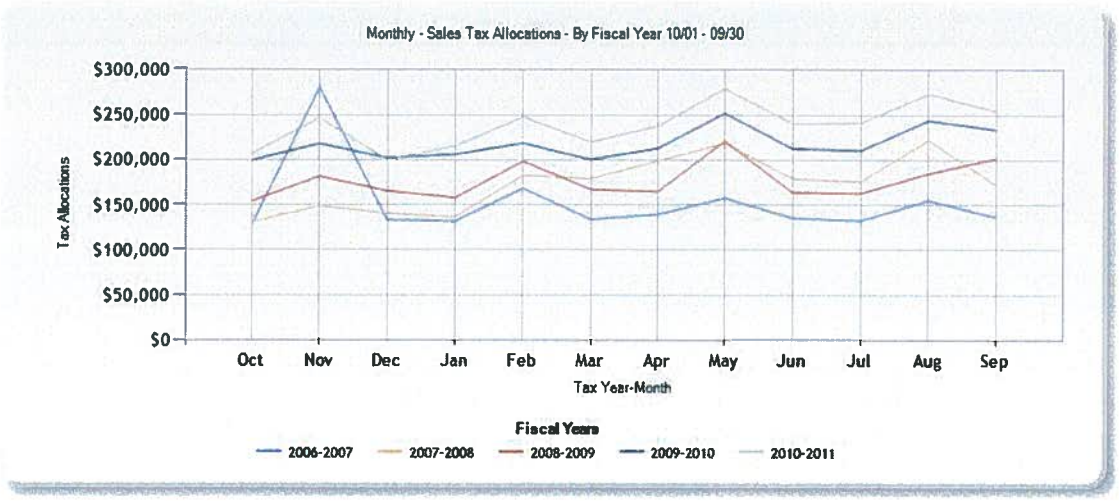
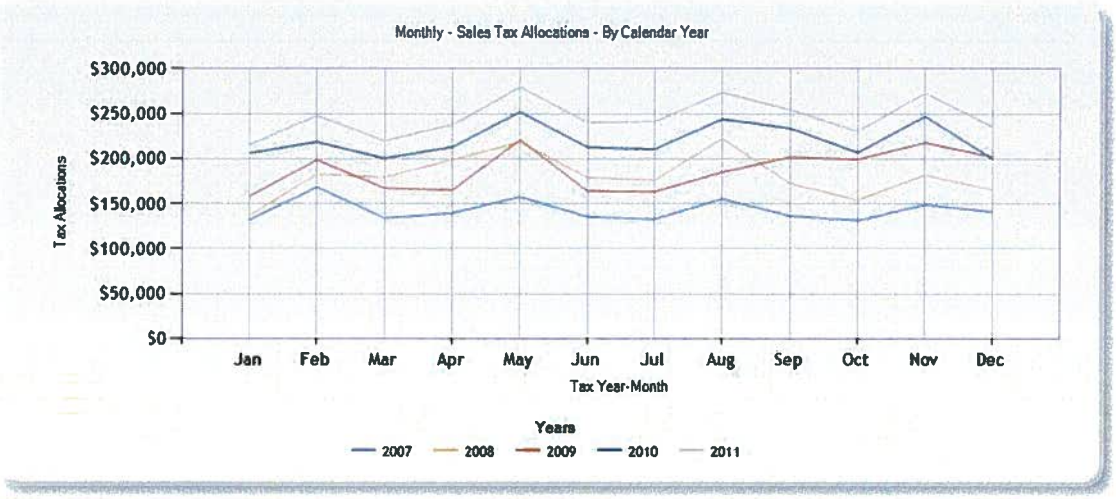
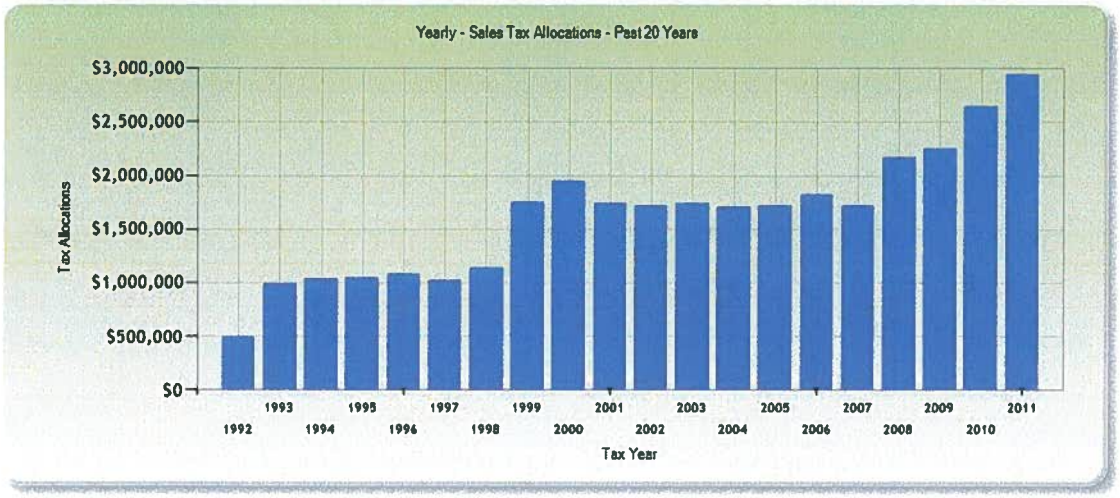



Monthly - Sales Tax Allocations - By Calendar Year
$300,000
$250,000
$200,000
$150,000
$100,000
$50,000
$0
Tax Allocations
Jan
Feb
Mar
Apr
May
Jun
Jul
Aug
Sep
Oct
Nov
Dec
Tax Year-Month
Years
2007
2008
2009
2010
2011


Yearly - Sales Tax Allocations - Past 20 Years
$3,000,000
$2,500,000
$2,000,000
$1,500,000
$1,000,000
$500,000
$0
Tax Allocations
1992
1993
1994
1995
1996
1997
1998
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2006
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2009
2010
2011
Tax Year

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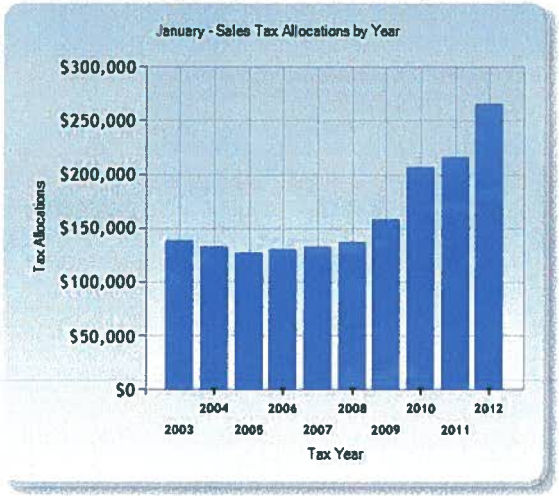
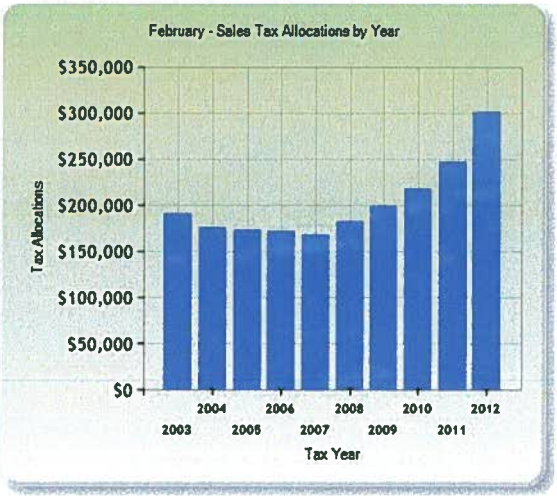
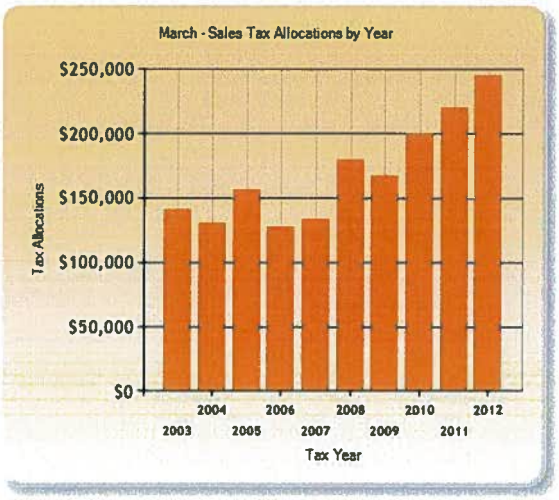
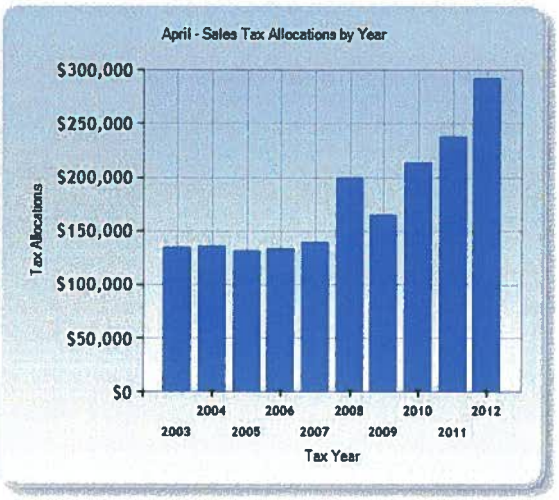
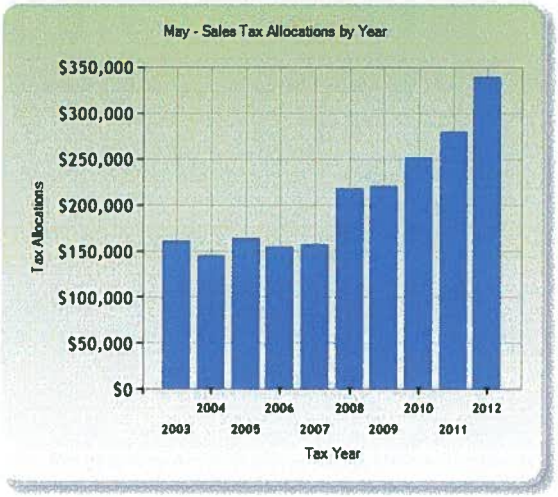
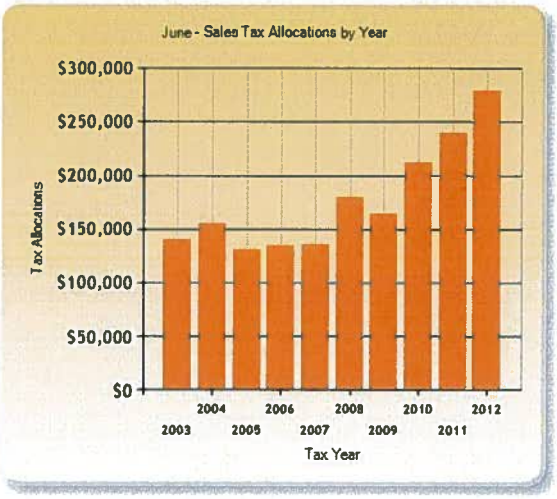

January - Sales Tax Allocations by Year
$300,000
$250,000
$200,000
$150,000
$100,000
$50,000
$0
Tax Allocations
2003
2004
2005
2006
2007
2008
2009
2010
2011
2012
Tax Year

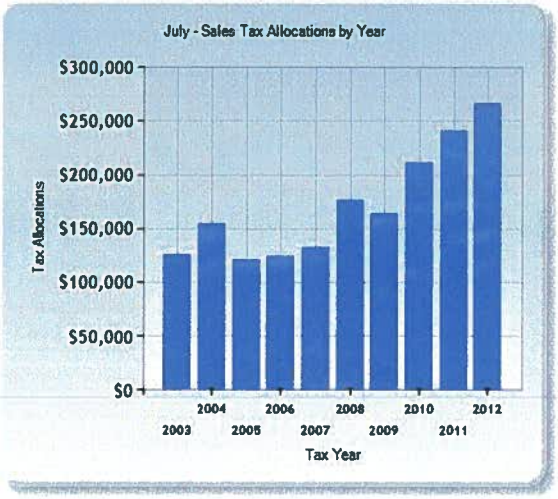

February - Sales Tax Allocations by Year
$350,000
$300,000
$250,000
$200,000
$150,000
$100,000
$50,000
$0
Tax Allocations
2003
2004
2005
2006
2007
2008
2009
2010
2011
2012
Tax Year

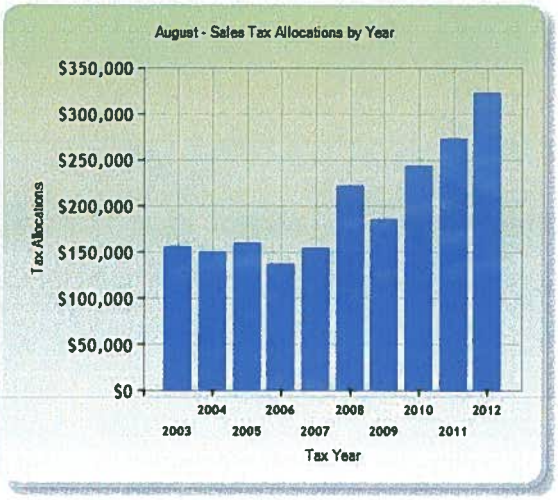

March - Sales Tax Allocations by Year
$250,000
$200,000
$150,000
$100,000
$50,000
$0
Tax Allocations
2003
2004
2005
2006
2007
2008
2009
2010
2011
2012
Tax Year


April - Sales Tax Allocations by Year
$300,000
$250,000
$200,000
$150,000
$100,000
$50,000
$0
Tax Allocations
2003
2004
2005
2006
2007
2008
2009
2010
2011
2012
Tax Year


May - Sales Tax Allocations by Year
$350,000
$300,000
$250,000
$200,000
$150,000
$100,000
$50,000
$0
Tax Allocations
2003
2004
2005
2006
2007
2008
2009
2010
2011
2012
Tax Year


June - Sales Tax Allocations by Year
$300,000
$250,000
$200,000
$150,000
$100,000
$50,000
$0
Tax Allocations
2003
2004
2005
2006
2007
2008
2009
2010
2011
2012
Tax Year


July - Sales Tax Allocations by Year
$300,000
$250,000
$200,000
$150,000
$100,000
$50,000
$0
Tax Allocations
2003
2004
2005
2006
2007
2008
2009
2010
2011
2012
Tax Year


August - Sales Tax Allocations by Year
$350,000
$300,000
$250,000
$200,000
$150,000
$100,000
$50,000
$0
Tax Allocations
2003
2004
2005
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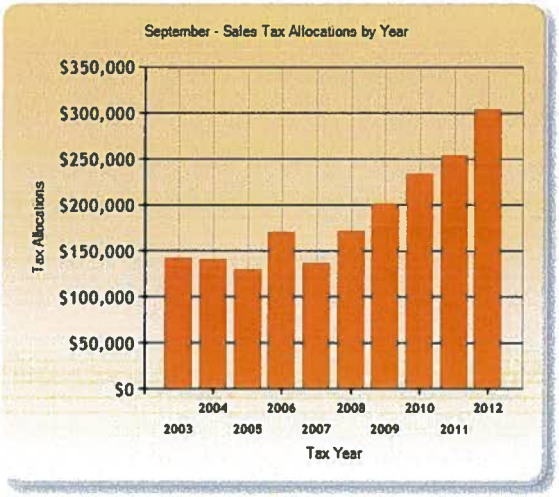
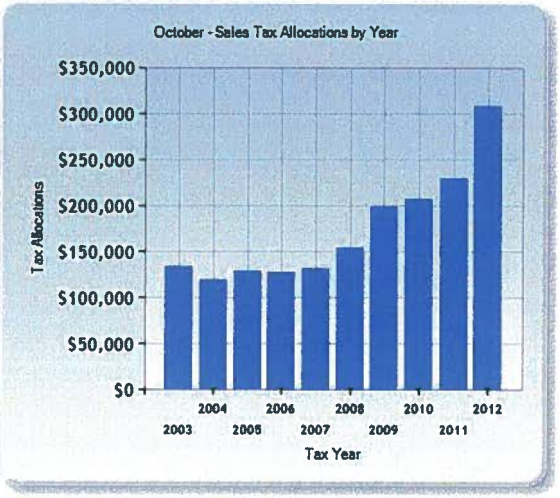
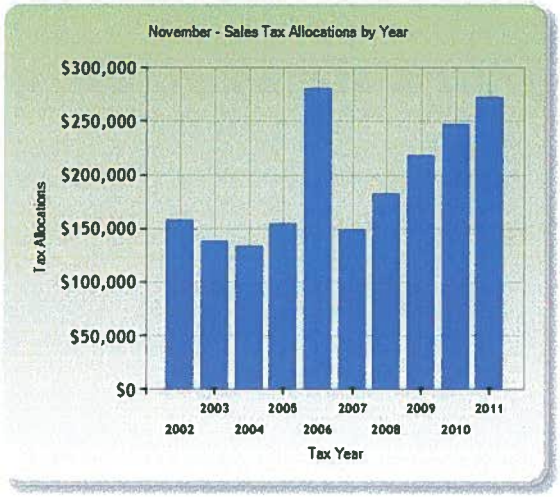
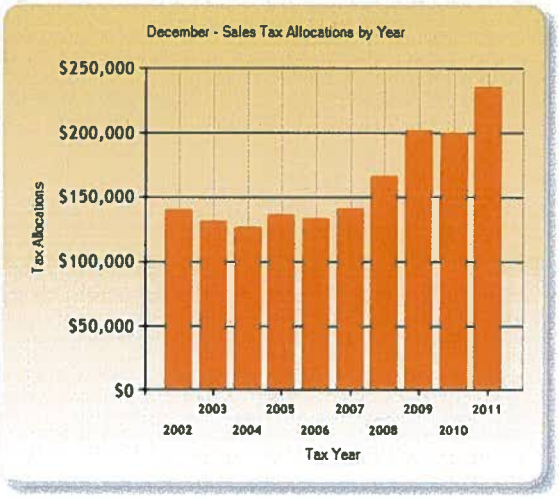
2007
2008
2009
2010
2011
2012
Tax Year









Today is 11/1/2012

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512-476-6947 - 600 W. 8th St. Austin, TX 78701

ORDINANCE NO. 2012-678

AN ORDINANCE AMENDING THE CITY OF WINDCREST CODE OF ETHICS POLICY BY ADOPTING SECTION 19 ENTITLED PURCHASING ETHICS.

WHEREAS, public employment, public contract employment, public service as an appointed or elected official is a public trust, it is the policy of the City of Windcrest to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel and public officials needed by the City of Windcrest. Such policy is implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering public service; and

WHEREAS, public employees, contract employees, appointed and elected officials must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the City of Windcrest's procurement organization; and

WHEREAS, to achieve the purpose, it is essential that those doing business with the City of Windcrest also observe the ethical standards prescribed herein;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WINDCREST, that the Code of Ethics of the City of Windcrest is amended by adopting a new purchasing policy which prohibits the following activities:

1. Personal Gain — It shall be a breach of ethics to attempt to realize personal gain through public employment, contract employment, appointed or elected officials with the City of Windcrest by any conduct inconsistent with the proper discharge of the their duties.
2. Influence — It shall be a breach of ethics to attempt to influence any public employee, contract employee, appointed or elected officials of the City of Windcrest to breach the standards of ethical conduct set forth in this code. The City Council shall be immediately informed of any attempt to breach this standard.
3. Conflicts of Interest. It shall be a breach of ethics for any employee, contract employee, appointed or elected official of the City of Windcrest to participate directly or indirectly in procurement when the employee, contract employee, appointed or elected official knows that:
    a. the employee, contract employee, appointed or elected official or any member of their families has a financial interest pertaining to the procurement;
    b. a business or organization in which the employee, contract employee, appointed or elected official, or any member of their immediate families, has a financial interest pertaining to the procurement; and
    c. any other person, business or organization with which the employee, contract employee, appointed or elected official or their immediate families is negotiating or has an arrangement concerning prospective employment is involved in the procurement.
4. Gratuities — It shall be a breach of ethics to offer, give or agree to give any employee, contract employee, appointed or elected official or former employee, contract employee or appointed or

elected official of the City of Windcrest, to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment or position in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement or a contract or subcontract or any solicitation or proposal therefore pending before the City of Windcrest.

5. Kickbacks — It shall be a breach of ethics for any payment, gratuity or offer of employment or position to be made by or on behalf of a contractor, subcontractor under a contract to prime contractor or higher tier subcontractor for any contract for the City of Windcrest or any person associated therewith, as an inducement for the award of a contract, subcontract or order.
6. Confidential Information with regards to procurement — It shall be a breach of ethics for any employee, contract employee, appointed or elected official, former employee or former contract employee, appointed or elected official of the City of Windcrest knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated gain of any person.

NOW THEREFORE, BE IT FURTHER ORDAINED BY THE CITY COUNCIL OF THE CITY OF WINDCREST, that the prohibition against gratuities and kickbacks (as expressed in # 4 and #5 of this ordinance) shall be conspicuously set forth in every contract awarded and solicitation issued and violations are subjected to prescribed penalties.

Passed and Approved this _____ day of _____ , 2012

_____

ALAN E BAXTER, Mayor

ATTEST:

_____

KELLY RODRIGUEZ, Assistant City Secretary

APPROVED S TO FORM AND LEGAL SUFFICIENCY:

_____

MICHAEL S. BRENAN, City Attorney

ORDINANCE NO. 2012-679

AN ORDINANCE AMENDING THE ZONING CODE BY ADDING REGULATIONS AUTHORIZING CARPORTS UNDER LIMITED CIRCUMSTANCES

WHEREAS, the Planning and Zoning Commission, after public hearing was held by it on September 25, 2012, recommended that the Zoning Code be amended to authorize carports under limited circumstances; and

WHEREAS, the City Council at a public hearing held on November 5, 2012 received said recommendation from the Planning and Zoning Commission and after considering such recommendation is of the opinion that the health, safety, morals, convenience and general welfare of the city would be enhanced by adopting the hereinafter provided amendment.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WINDCREST, TEXAS that Section 23.500 Definitions of the Code of Ordinances is hereby amended by adopting the following definition of carport:

"A carport is a space with housing or storage of motor vehicles and must be open to all four sides unless attached to a maximum of two (2) sides of the primary structure. Structures with three (3) closed walls and/or a vehicle door are considered garages or storage units and must meet the requirements of a garage or storage unit."

NOW THEREFORE, BE IT FURTHER ORDAINED BY THE CITY COUNCIL OF THE CITY OF WINDCREST, TEXAS that Subchapter 23.900 of the Code of Ordinances is hereby amended by adopting the following Section 23.908:

"Sec. 23.908 CARPORTS

Carports are prohibited in residential zoning districts of the city."

PASSED AND APPROVED this ___ day of November, 2012.

_____

Alan Baxter, MAYOR

ATTEST:

_____

Kelly Rodriguez, CITY SECRETARY

APPROVED AS TO FORM:

_____

Michael S. Brenan, CITY ATTORNEY

ORDINANCE NO. 2012-680

AN ORDINANCE AMENDING THE ZONING CODE BY ADDING REGULATIONS AUTHORIZING CARPORTS UNDER LIMITED CIRCUMSTANCES

WHEREAS, the Planning and Zoning Commission, after public hearing was held by it on September 25, 2012, recommended that the Zoning Code be amended to authorize carports under limited circumstances; and

WHEREAS, the City Council at a public hearing held on November 5, 2012 received said recommendation from the Planning and Zoning Commission and after considering such recommendation is of the opinion that the health, safety, morals, convenience and general welfare of the city would be enhanced by adopting the hereinafter provided amendment.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WINDCREST, TEXAS that Section 23.500 Definitions of the Code of Ordinances is hereby amended by adopting the following definition of carport:

"A carport is a space with housing or storage of motor vehicles and must be open to all four sides unless attached to a maximum of two (2) sides of the primary structure. Structures with three (3) closed walls and/or a vehicle door are considered garages or storage units and must meet the requirements of a garage or storage unit."

NOW THEREFORE, BE IT FURTHER ORDAINED BY THE CITY COUNCIL OF THE CITY OF WINDCREST, TEXAS that Subchapter 23.900 of the Code of Ordinances is hereby amended by adopting the following Section 23.908:

"Sec. 23.908 CARPORTS

Carports may be constructed in the side yard of a corner lot residence and the rear yard of other residences provided that such carports (1) are constructed of materials that match the materials of the primary residential structure, at a minimum 95% match, in like

scale, proportion and/or profile and maintain the same roof line as the primary residential structure, (2) are constructed of building materials of similar type, size, shape, texture and colors as the building materials of the primary residential structure, (3) are open on two or more sides, (4) are open on at least two sides if attached to the primary residential structure and shall have unobstructed vehicular access, (5) have approved, engineered foundation for each pole or column base meeting requirements of the International Building Code, (6) have roof pitches, whether attached or detached, matching that of the primary residential structure, (7) may not exceed ten feet in total height, (8) may not have exposed metal pole vertical supports, (9) must adhere to the setback standards established by the Windcrest Code of Ordinances, (10) may be constructed as an integral element of the primary residential structure if it is recessed a minimum of ten feet behind the primary residential structure front façade, and (11) must be accessible from a public right-of-way (such as a street or alley). Temporary carport structures, such as those constructed of canvas, clothed material or vinyl tent materials or supported with PVC, metal or similar piping pole supports are prohibited. Applications for carport building permits should (1) include a property survey or scaled drawing (1" = 20' minimum) which shows the shape of the lot and the shape of the existing primary residential structure on the lot and the location of the carport with distances to all property lines and all setbacks, (2) show the location and size of other structures on the lot (swimming pools, retaining walls, accessory buildings, detached garages), and (3) show the location of gas and sewer service lines."

PASSED AND APPROVED this ___ day of November, 2012.

_____

Alan Baxter, MAYOR

ATTEST:

_____

Kelly Rodriguez, CITY SECRETARY

APPROVED AS TO FORM:

_____

Michael S. Brenan, CITY ATTORNEY

WINDCREST
TEXAS

City Council Agenda Item Report

November 5, 2012

Contact – Sarah Mangham
smangham@windcrest-tx.gov

Resolution #: 2012-410 (R)

SUBJECT:
DELIBERATION AND POSSIBLE ACTION ON A RESOLUTION ADOPTING AN AMENDMENT TO THE CITY OF WINDCREST CAFETERIA PLAN BY INCREASING THE MAXIMUM AMOUNT WHICH MAY BE ALLOCATED BY EACH PARTICIPANT TO $4,000.00 PER PLAN YEAR.

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1. BACKGROUND/HISTORY

The Flexible Spending Plan (i.e. the Cafateria Plan) allows employees to contribute up to $3,000 into their Flexible Spending Account. During summer enrollment there were requests to increase it to $4,000. This is the documentation required to be executed to increase the maximum amount.

2. FINDINGS/CURRENT ACTIVITY

Employees currently enrolled into this program (i.e. it's an optional program) are allowed to contribute up to $4,000 in pre taxed dollars to be used for health related expenses.

3. FINANCIAL IMPACT -

N/A - Funded by the employees

4. ACTION OPTIONS/RECOMMENDATION

Staff recommends approval of a resolution adopting an amendment to the City's Cafateria plan to increase the maximum amount to $4,000.

RESOLUTION NO. 2012-410 (R)

A RESOLUTION ADOPTING AN AMENDMENT TO THE CITY OF WINDCREST CAFETERIA PLAN BY INCREASING THE MAXIMUM AMOUNT WHICH MAY BE ALLOCATED BY EACH PARTICIPANT TO $4,000.00 PER PLAN YEAR

WHEREAS, the City Council has determined that it would be beneficial for the employees of the City to amend the Windcrest Cafeteria Plan to increase the maximum amount which may be allocated to employee health flexible spending accounts to $4,000.00 per plan year.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Windcrest, Texas, that:

1. That the attached Amendment Number One to City of Windcrest Cafeteria Plan is hereby approved and adopted.

2. That the City Manager shall promptly notify the employees of the City of the adoption of this Amendment Number One to the Flexible Spending Account Plan by delivering to each employee a copy of the summary description of the changes to the plan in the form of the Summary Plan Description- Material Modification presented to this meeting, which form is hereby approved.

DULY PASSED AND APPROVED, on the 5th day of November, 2012 at a regular meeting of the City Council of the City of Windcrest, Texas, which meeting was held in compliance with the Open Meetings Act, Tex. Gov't. Code, §551.001, et. seq. at which meeting a quorum was present and voting.

CITY OF WINDCREST, TEXAS

_____

Alan Baxter, Mayor

ATTEST:

_____

Kelly Rodriguez, Assistant City Secretary

APPROVED:

_____

Michael S. Brenan, City Attorney

AMENDMENT NUMBER ONE TO
CITY OF WINDCREST CAFETERIA PLAN

BY THIS AGREEMENT, City of Windcrest Cafeteria Plan (herein referred to as the "Plan") is hereby amended as follows, effective as of October 1, 2012:

1. The Section in the Health Flexible Spending Account entitled "Limitation on Allocations" is amended to read as follows:

Notwithstanding any provision contained in this Health Flexible Spending Account to the contrary, the maximum amount that may be allocated to the Health Flexible Spending Account by a Participant in or on account of any Plan Year is $4000.I

IN WITNESS WHEREOF, this Amendment has been executed this 5th day of November, 2012.

City of Windcrest

By _____
EMPLOYER

CITY OF WINDCREST CAFETERIA PLAN

SUMMARY PLAN DESCRIPTION
MATERIAL MODIFICATIONS

I
INTRODUCTION

City of Windcrest has amended your Flexible Spending Account Plan as of October 1, 2012.

This is merely a summary of the most important changes to the Plan. It is presented to you as an addition to the Summary Plan Description. If you have any questions, contact the Administrator. A copy of the Plan, including this amendment, is available for your inspection. If there is any discrepancy between the terms of the Plan or the amendment itself and this summary of material modifications, the provisions of the Plan, as amended, will control.

II
GENERAL INFORMATION ABOUT THE PLAN

There is certain general information which you may need to know about Amendment Number ONE to the Plan. This information has been summarized for you in this Section.

1. General Plan Information

City of Windcrest Cafeteria Plan is the name of the Plan.

The amended provisions of the Plan become effective on October 1, 2012, unless otherwise provided.

Your Employer has assigned Plan Number 501 to your Plan.

2. Employer Information

Your Employer's name, address and identification number are:

City of Windcrest
8601 Midcrown
Windcrest, Texas 78239
74-1587947

3. Administrator Information

The name, address and business telephone number of the Administrator are:

City of Windcrest
8601 Midcrown
Windcrest, Texas 78239
(210) 655-0022

The Administrator has the complete power, in its sole discretion to determine all questions arising in connection with the administration, interpretation, and application of the Plan (and any related documents and underlying policies). Any such determination by the Administrator is conclusive and binding upon all persons.

III
SUMMARY OF CHANGES

1. Health Flexible Spending Account

The Health Flexible Spending Account enables you to pay for expenses allowed under Sections 105 and 213(d) of the Internal Revenue Code which are not covered by our medical plan and save taxes at the same time.

The Health Flexible Spending Account enables you to pay for expenses allowed under Sections 105 and 213(d) of the Internal Revenue Code which are not covered by insurance and save taxes at the same time. The Health Flexible Spending Account allows you to be reimbursed by the Employer for out-of-pocket medical, dental and/or vision expenses incurred by you and your dependents.

Drug costs, including insulin, may be reimbursed.

Beginning January 1, 2011, you may be reimbursed for "over the counter" drugs only if those drugs are prescribed for you. You may not, however, be reimbursed for the cost of other health care coverage maintained outside of the Plan, or for long-term care expenses. A list of covered expenses is available from the Administrator.

The most that you can contribute to your Health Flexible Spending Account each Plan Year is $4000.00. In order to be reimbursed for a health care expense, you must submit to the Administrator an itemized bill from the service provider. We will also provide you with a debit or credit card to use to pay for medical expenses. The Administrator will provide you with further details. Amounts reimbursed from the Plan may not be claimed as a deduction on your personal income tax return. Reimbursement from the fund shall be paid at least once a month. Expenses under this Plan are treated as being "incurred" when you are provided with the care that gives rise to the expenses, not when you are formally billed or charged, or you pay for the medical care.

You may be reimbursed for expenses for any child until the end of the calendar year in which the child reaches age 26. A child is a natural child, stepchild, foster child, adopted child, or a child placed with you for adoption. If a child gains or regains eligibility due to these new rules, that qualifies as a change in status to change coverage.

Newborns' and Mothers' Health Protection Act: Group health plans generally may not, under Federal law, restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn child to less than 48 hours following a vaginal delivery, or less than 96 hours following a cesarean section. However, Federal law generally does not prohibit the mother's or newborn's attending provider, after consulting with the mother, from discharging the mother or her newborn earlier than 48 hours (or 96 hours as applicable). In any case, plans and issuers may not, under Federal law, require that a provider obtain authorization from the plan or the issuer for prescribing a length of stay not in excess of 48 hours (or 96 hours).

Women's Health and Cancer Rights Act: This plan, as required by the Women's Health and Cancer Rights Act of 1998, will reimburse up to plan limits for benefits for mastectomy-related services including reconstruction and surgery to achieve symmetry between the breasts, prostheses, and complications resulting from a mastectomy (including lymphedema). Contact your Plan Administrator for more information.

RESOLUTION NO. 2012-411 (R)

A RESOLUTION DESIGNATING THE SAN ANTONIO EXPRESS–NEWS AND THE NORTHEAST HERALD AS THE NEWSPAPERS FOR PUBLICATION OF OFFICIAL NOTICES OF THE CITY OF WINDCREST

WHEREAS, the City is required to designate a newspaper for the publication of official notices for the City of Windcrest; and

WHEREAS, the Northeast Herald, which is published weekly, is currently the newspaper for the publication of official notices; and

WHEREAS, it is necessary from time to time to publish official notices without waiting for publication in a weekly newspaper.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Windcrest, Texas, that:

1. That in addition to the Northeast Herald, official notices of the City of Windcrest may be published in the San Antonio Express-News.

DULY PASSED AND APPROVED, on the 5th day of November, 2012 at a regular meeting of the City Council of the City of Windcrest, Texas, which meeting was held in compliance with the Open Meetings Act, Tex. Gov't. Code, §551.001, et. seq. at which meeting a quorum was present and voting.

CITY OF WINDCREST, TEXAS

_____

Alan Baxter, Mayor

ATTEST:

_____

Kelly Rodriguez, Assistant City Secretary

APPROVED:

_____

Michael S. Brenan, City Attorney

WINDCREST
TEXAS

City Council Agenda Item Report

November 5, 2012

Contact – Robert Colunga
rcolunga@windcrest-tx.gov

Resolution #: 2012-412 (R)

SUBJECT: **Deliberation and possible action on a resolution to authorize Purchase of Metrics Weather Meteorological Weather Station and a High Definition Pan Tilt Zoom Camera**

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1. **BACKGROUND/HISTORY**

The City has looked into several areas to look into how to better serve the community concerning public safety, communication and beautification to name just a few. The City explored a unique way to do this is through a weather station system that is located here in Windcrest. With severe weather and our community, quick communication to our residents is crucial to prepare for harsh weather conditions to allow our citizens the time they need to prepare.

2. **FINDINGS/CURRENT ACTIVITY**

With City permission we have explored into the Weather Station and the impact it would have for public safety, communication and even marketing the City of Windcrest.

To ensure the highest level of communication with our community, we feel that this system will be able to notify residents of Windcrest and businesses not only through our early warning devices located here at City Hall but through the media(TV, Radio, internet, etc.) but also through our own website and phone application, which can all be integrated through this device to communicate issues of public safety. This Weather Station will also communicate current conditions as well as a view of our Windcrest Golf Course and Windcrest Elementary School. The Weather Station will also allow us to promote Windcrest through the media announcing and showing conditions in Windcrest at our Golf Course as well as through our website. Having our city mentioned in the media several times a day only brings

awareness to our Jewel of a City. This will not only benefit the City of Windcrest but have a positive financial impact for our business the more we attract people to our City.

3. FINANCIAL IMPACT -

The fee for these services is not to exceed $13,000.00. Maintenance of the Station and HD Camera is expected to not exceed $250 per month.

4. ACTION OPTIONS/RECOMMENDATION

Staff recommends to take action to the authorization to Purchase the Weather Station and High Definition Pan Tilt Zoom Camera and Authorize the City Manager Rafael Castillo to negotiate and sign a contract for the maintenance of the system not to exceed $250 per month.

RESOLUTION NO. 2012-412 (R)

A RESOLUTION APPROVING THE PURCHASE OF A WEATHER STATION AND PAN/ TILT/ ZOOM CAMERA FROM WEATHER METRICS, INC. AND AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE AN AGREEMENT FOR SUCH PURCHASE AND AN AGREEMENT FOR SOFTWARE MAINTENANCE/ LICENSING FEE AND PARTS MAINTENANCE FROM WEATHER METRICS, INC.

WHEREAS, it would enhance the safety and welfare of the citizens of the City of Windcrest for the City to install and operate a remotely controlled weather camera at a location in the City, such as the Windcrest Golf Course, in order to observe weather conditions and other images beneficial to the City of Windcrest; and

WHEREAS, the City intends to collaborate with WOAI-TV in the operation and broadcasting of weather conditions and other images from the remotely controlled weather camera.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Windcrest, Texas, that:

1. That the purchase of a weather station and a pan/ tilt/ zoom camera from Weather Metrics, Inc. for a price of $12,000.00 and the purchase of a software maintenance/ licensing fee and parts maintenance agreement for the camera for a price of $210.00 per month are hereby approved.

2. The City Manager is authorized to negotiate and execute agreements for such purchases on behalf of the city.

DULY PASSED AND APPROVED, on the 5th day of November, 2012 at a regular meeting of the City Council of the City of Windcrest, Texas, which meeting was held in compliance with the Open Meetings Act, Tex. Gov't. Code, §551.001, et. seq. at which meeting a quorum was present and voting.

CITY OF WINDCREST, TEXAS

_____

Alan Baxter, Mayor

ATTEST:

_____

Kelly Rodriguez, Assistant City Secretary

APPROVED:

_____

Michael S. Brenan, City Attorney

4-ZONE WEATHER-CAMERA NETWORK

Exclusive Opportunity for

the City of Windcrest

STORM TRACKER 4

NEWS 4 WOAI

WOAI.com

WOAI 4-ZONE WEATHER-CAMERA NETWORK

- A remote camera and weather sensors strategically placed at the Windcrest Golf Course.
- The camera will provide a LIVE remote view and weather from the Windcrest Golf Course, with amazing time-lapse features shown on-air.
- News 4 WOAI features at least one weather camera in every newscast and on WOAI.com *24/7*.
- There are currently four other Weather Cam Network Cameras:

Benavides Rhodes Insurance Co., Eagle Pass
The Landmark, New Braunfels
Randle Rather Building, Gonzales
The Vidorra, Downtown San Antonio

STORM TRACKER 4

NEWS 4 WOAI
WOAI.com

4 Zone Network

Central Zone
San Antonio

Hill Country Zone
New Braunfels

Eastern Zone
Gonzales

Western Zone
Eagle Pass

A Live Remote Camera and Weather Sensors located at the City of Windcrest Golf Course, live on News 4 WOAI newscasts and available 24 hours a day on WOAI.com…
brought to News 4 viewers by the City of Windcrest.

STORM TRACKER 4

NEWS 4 WOAI
WOAI.com

As a 4-Zone Weather-Camera location, the City of Windcrest will be featured *24/7* on our web site WOAI.com and in various News 4 WOAI newscasts

Day	Time	Viewers 2+	Day	Time	Viewers 2+
Mon-Fri	4:30-7am	68,000	Saturday	5-5:30pm	42,000
Mon-Fri	5-5:30pm	58,700	Saturday	10—10:30pm	49,000
Mon-Fri	6-6:30pm	61,400	Sunday	5:-5:30-pm	82,400
Mon-Fri	630-7pm	49,900	Sunday	10-10:30pm	125,600
Mon-Fri	10-10:35pm	60,000			

Source: Nielsen Feb 2012

StormTracker 4 Team… A Trusted Brand

We are living in a time of weather extremes. John Gerard is a Certified Broadcast Meteorologist with over 30 years of television experience. He holds the distinguished seals of broadcasting approval from both the American Meteorological Society (AMS) and the National Weather Association (NWA).

John has been on the air for some memorable weather events such as tracking Hurricanes Katrina and Wilma across South Florida, a legendary April snowfall in Tennessee, and the Miami Tornado that struck downtown Miami and Miami Beach in 1997. His work that day is included in a special presentation on tornadoes produced by the Discovery Channel that still airs worldwide several times a year.

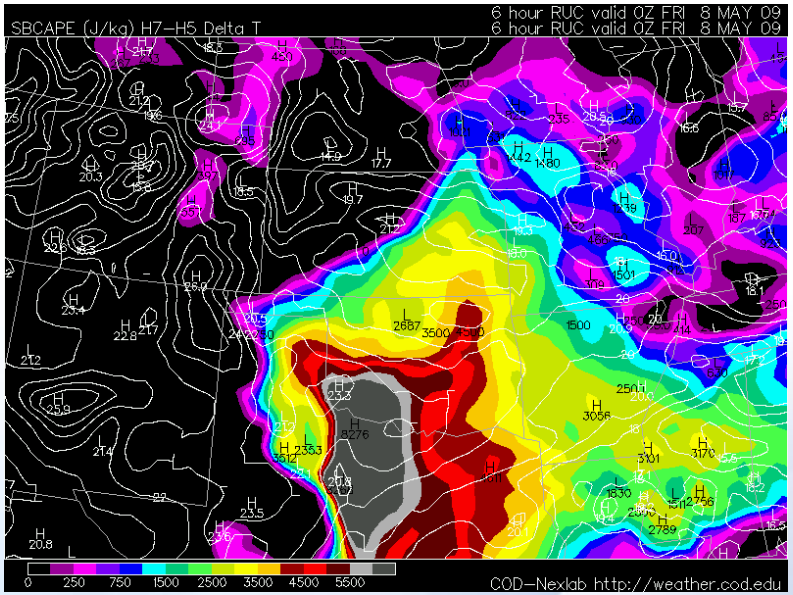
John Gerard
Chief Meteorologist

Albert Flores – Morning Meteorologist
As the morning Meteorologist for WOAI his goal is to give you something to smile about and feel informed every time you tune in.

WEATHER IS OF SPECIAL IMPORTANCE TO OUR RESIDENTS

Weather is big business in Texas! Our residents are fascinated by all kinds of weather and its affect on their daily lives.

WOAI has developed a program alongside the 4-Zone Forecast to entice our weather-fanatical residents… and we are offering this unique opportunity to the **City of Windcrest.**



UNIQUE OPPORTUNITY FOR THE CITY OF WINDCREST

ADVANTAGES FOR THE CITY OF WINDCREST

- Live Camera with shot of the Golf Course 24/7 on WOAI.com

  Weather Metrics/WeatherVision is the only remote location camera system designed specifically for local TV stations through dynamic live, clip, and time lapse video. WeatherVision camera systems have the ability to Zoom, pan and tilt.

- Live data for **City of Windcrest** 24/7 with weather information on WOAI.com

  Each weather sensor accurately measures a variety of current weather conditions from wind speed, temperature, humidity and much more. WeatherVision data sensors are no bigger than a coffee can and with no moving parts they are one of the most reliable sensors available.

- [illegible] mera will be highlighted in the News on WOAI TV s[illegible] eek

Richfield Dr
Weatherly Dr
Spaceway Dr
Rocklyn Dr
Winfield Blvd
Zephyr Dr
Windcrest Golf Course
Faircrest Dr
Golfcrest Dr
Tidecrest Dr
Gandieglo Dr
Balfour Dr
Fenwick Dr
Moorside Dr
Fawndale Ln
Sunhaven Dr
Bluegrass Ln
Parkcrest Dr
Bayou Bend
Brook Falls
Windy Cove
Eagle Crest Blvd
Winding Ridge Dr
Crestway Rd
Hickory Hollow
Spanish Moss
Spindrift Dr
Windrock Dr
Mallard Pt
Northmont Dr
Braewick Dr
Magellan
Francis Drake
Walter Raleigh
Quail Run
Wilmon Way
Winsong Dr
Tradewind Dr
Galewind Dr
Crosswind Dr
Driftwind Dr
Cloudmont Dr
Crestwind Dr
Windway Dr
Cleardrift Dr
Fourwinds Dr
Windsor Hill
Walzem Rd
Interchange Pkwy
N I-35
Frati Dr
FRATI
Loop 410
Webb Dr
Rayibon Dr
Gawain Dr
Midtown Dr
Bentley Dr
Round Table Dr
Prince Valiant Dr
Galahad Dr
CAMELOT
Castle Knight Dr
Sir Gareth Dr
Brandemere Dr
Castle Green
Guinevere Dr
Lancelot Dr
King Arthur Dr
Merlin Dr
Crusade Dr
Castle Glade Dr
Lovett Oaks
Castle Way Dr
Eisenhauer Rd
Woodlake Pkwy
Clematis Trail
Azalea
Dialik Dr
Robin Forest
Austin Forest
Melbury Forest
Windsor Oaks
Oak Chase
Montgomery Rd
1976
410
26
166
35
165
166A
164B

Change orders involving an increase of more than $10,000 must be approved by City Council.

Payment Requisition: It is the responsibility of the Project Manager and the Engineer/Architect to ensure that the correct Payment Requisition forms are properly completed with **all** necessary signatures except the Finance Department, and/or the City Manager, which are obtained after the completed and signed Payment Requisition, is sent to the Finance Department. The City Manager's signature is only required on the final payment.

Final Payments: The City Manager signs all Final Payment Requisitions.

Monthly reports will be submitted to Council as part of the Monthly Finance Report.

4. EXEMPT PURCHASING FUNCTIONS

State law provides a few exemptions from competitive bidding. Such examples include:

- The purchase of land or rights-of-ways;
- Personal or professional services, such as engineering, architectural, or planning services;
- Property bought at an auction;
- Property bought at a going-out-of-business sales; and
- Property bought from another political subdivision or state or federal government.
- In case of public calamity, where it becomes necessary to act at once to provide relief for local citizens or to preserve or protect the public health;
- In case of unforeseen damage to public property, machinery, or equipment, where immediate repair is necessary;
- Procurement necessary to preserve or protect public health or safety of the City's residents;
- Procurement for work that is performed and paid for by the day as the work progresses;
- Purchase of land or right-of-way; or
- Other matters as set forth in Section 252.022 of the Texas Local Gov't. Code.

The application of exemptions from competitive bidding requirements for purchases in excess of $10,000 must be approved in each case by the City Manager and the City Council.

Sec. 252.022. GENERAL EXEMPTIONS. (a) This chapter does not apply to an expenditure for:

(1) a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality;

(2) a procurement necessary to preserve or protect the public health or safety of the municipality's residents;

(3) a procurement necessary because of unforeseen damage to public machinery, equipment, or other property;

(4) a procurement for personal, professional, or planning services;

(5) a procurement for work that is performed and paid for by the day as the work progresses;

(6) a purchase of land or a right-of-way;

(7) a procurement of items that are available from only one source, including:

(A) items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies;

(B) films, manuscripts, or books;

(C) gas, water, and other utility services;

(D) captive replacement parts or components for equipment;

(E) books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and

(F) management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits;

(8) a purchase of rare books, papers, and other library materials for a public library;

(9) paving drainage, street widening, and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements;

(10) a public improvement project, already in progress,

authorized by the voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes authorized by the voters;

(11) a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212;

(12) personal property sold:

(A) at an auction by a state licensed auctioneer;

(B) at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code;

(C) by a political subdivision of this state, a state agency of this state, or an entity of the federal government; or

(D) under an interlocal contract for cooperative purchasing administered by a regional planning commission established under Chapter 391;

(13) services performed by blind or severely disabled persons;

(14) goods purchased by a municipality for subsequent retail sale by the municipality;

(15) electricity; or

(16) advertising, other than legal notices.

(b) This chapter does not apply to bonds or warrants issued under Subchapter A, Chapter 571.

(c) This chapter does not apply to expenditures by a municipally owned electric or gas utility or unbundled divisions of a municipally owned electric or gas utility in connection with any purchases by the municipally owned utility or divisions of a municipally owned utility made in accordance with procurement procedures adopted by a resolution of the body vested with authority for management and operation of the municipally owned utility or its divisions that sets out the public purpose to be achieved by those procedures. This subsection may not be deemed to exempt a municipally owned utility from any other applicable statute, charter provision, or ordinance.

(d) This chapter does not apply to an expenditure described by Section 252.021(a) if the governing body of a municipality determines that a method described by Chapter 2267, Government Code, provides a better value for the municipality with respect to that expenditure

than the procedures described in this chapter and the municipality adopts and uses a method described in that subchapter with respect to that expenditure.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 47(c), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 1001, Sec. 1, eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 42, Sec. 1, eff. April 25, 1991; Acts 1993, 73rd Leg., ch. 749, Sec. 7, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 757, Sec. 9, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 207, Sec. 2, eff. May 23, 1995; Acts 1995, 74th Leg., ch. 746, Sec. 1, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 125, Sec. 1, eff. May 19, 1997; Acts 1997, 75th Leg., ch. 1370, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 405, Sec. 41, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1409, Sec. 2, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 8.290, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 434, Sec. 3, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 885, Sec. 3.77(3), eff. April 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1129, Sec. 4.02, eff. September 1, 2011.

Weather Metrics, Inc.
Enhancing Peoples Lives through Weather Technology

ADDENDUM 3
to WxVision.Net™ Contract

This contract is entered into by and between **WEATHER METRICS, INC.** ("SELLER") and **WOAI-TV** ("CUSTOMER") on this 17th day of October, 2012. This contract becomes effective when signed by both parties.
All Terms and Conditions outlined in this agreement are in addition to those previously agreed to by **WOAI-TV** in the **WXVISION.NET SYSTEM CONTRACT** and any addendums, entered into by and between **WEATHER METRICS, INC.** ("SELLER") and **WOAI-TV** ("CUSTOMER") on the 3rd day of May, 2012

"CUSTOMER":	WOAI-TV 1031 Navarro San Antonio, TX 78205	Phone: Email: Contact:	210-226-4444 jackierutledge@woaitv.com Jackie Rutledge General Manager

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SALES PRICE:

$ 12,000 (twelve thousand, and no/100's) for one weather station and one pan/tilt/zoom camera.**($9,000 first payment is outlined in Addendum 2)**

$ 210.00 (two-hundred and ten dollars and no/100's dollars) per month per unit for the camera, pan/tilt/zoom (p/t/z), and StreamVision™ software maintenance/licensing fee and parts maintenance on the camera, p/t/z and **StreamVision™ package**, beginning the first month following delivery of equipment, until the end of the contract previously agreed to by WOAI-TV.(**See Addendum 2**)

TERMS: The terms of payment shall be:

- $ 250.00 (Two hundred fifty and no/100's dollars) payable monthly for 12 (twelve) months effective December 1st, 2012, through November 1st, 2013**.(This amount is additional $3,000 as outlined in Addendum 2**

  $ 210.00 (two-hundred and ten dollars and no/100's dollars) per month per unit for the camera, pan/tilt/zoom (p/t/z), and StreamVision™ software maintenance/licensing fee and parts maintenance on the camera, p/t/z and **StreamVision™ package**, beginning the first month following delivery of equipment, until the end of the contract previously agreed to by WOAI-TV.(**See Addendum 2)**

SCHEDULE: Please see attached Equipment Schedule

The system involves a single copy software license granted by "SELLER". The software in this system is licensed only to "CUSTOMER"; it is not sold, but remains the property of "SELLER".

SHIPMENT: The "CUSTOMER" will pay all shipping and handling.

"SELLER":	"CUSTOMER":
WEATHER METRICS, INC.	**WOAI-TV**
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____

Schedule of Equipment

Equipment: Camera was already purchased with Addendum 2.

One (1) WxView™ Weather Station with one (1) WxVision™ Pan/Tilt/Zoom Camera: (See Addendum 2)

- WxView Weather Station - Ruggedized, anti-corrosive high impact materials, confirmed accurate to 125 mph winds, -43 (wind chill –83)/+122 degrees Fahrenheit. Sonar wind sensor, impact rain sensor
- WeatherVision™ Outdoor HD Camera w/ Dual Lenses and up to 20X Zoom
- Ruggedized, anti-corrosive high impact materials, confirmed accurate to 125 mph winds, -43 (wind chill –83)/+122 degrees Fahrenheit
- WeatherVision™ Camera Software Packages
- WeatherVision Pan/Tilt/Zoom Unit and Controller
- Non-penetrating roof mount galvanized steel
- Managed PC computer pre-configured included
- Up to 250' of cabling for installation
- All hardware required for installation

StreamVision Services Provided

StreamVision – Hosted Website Streaming

- The base StreamVision plan includes 20,000 viewer-minutes for each StreamVision Camera.

- A viewer-minute is defined as each minute a viewer watches a video feed on the "CUSTOMER'S" Website rounded up to the next minute.

- The total viewer minutes for all of the cameras in a StreamVision contract are shared between all of the cameras in the contract. If "CUSTOMER" uses more than the allotted viewer-minutes "CUSTOMER" is billed <u>$0.0025 (.25/100's dollars)</u> per additional viewer-minute.

Weather Metrics, Inc.
Enhancing Peoples Lives through Weather Technology

ADDENDUM 2
to WxVision.Net™ Contract

This contract is entered into by and between **WEATHER METRICS, INC.** ("SELLER") and **WOAI-TV** ("CUSTOMER") on this 17th day of October, 2012. This contract becomes effective when signed by both parties.
All Terms and Conditions outlined in this agreement are in addition to those previously agreed to by **WOAI-TV** in the **WXVISION.NET SYSTEM CONTRACT** and any addendums, entered into by and between **WEATHER METRICS, INC.** ("SELLER") and **WOAI-TV** ("CUSTOMER") on the 3rd day of May, 2012

"CUSTOMER":	WOAI-TV 1031 Navarro San Antonio, TX 78205	Phone: Email: Contact:	210-226-4444 jackierutledge@woaitv.com Jackie Rutledge General Manager

---

SALES PRICE:

$ 12,000 (twelve thousand, and no/100's) for one weather station and one pan/tilt/zoom camera.

$ 210.00 (two-hundred and ten dollars and no/100's dollars) per month per unit for the camera, pan/tilt/zoom (p/t/z), and StreamVision™ software maintenance/licensing fee and parts maintenance on the camera, p/t/z and **StreamVision™ package**, beginning the first month following delivery of equipment, until the end of the contract previously agreed to by WOAI-TV.

TERMS: The terms of payment shall be:

- $9,000.00 (nine thousand, and no/100's dollars) due upon signing of this addendum.
  The remaining terms are outlined in additional Addendum number 3.
  Monthly Maintenance and additional Stream Vision **are outlined in additional Addendum number 3.**

SCHEDULE: Please see attached Equipment Schedule

The system involves a single copy software license granted by "SELLER". The software in this system is licensed only to "CUSTOMER"; it is not sold, but remains the property of "SELLER".

SHIPMENT: The "CUSTOMER" will pay all shipping and handling.

"SELLER":	"CUSTOMER":
WEATHER METRICS, INC.	**WOAI-TV**
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____

Schedule of Equipment

Equipment:

One (1) WxView™ Weather Station with one (1) WxVision™ Pan/Tilt/Zoom Camera:

- WxView Weather Station - Ruggedized, anti-corrosive high impact materials, confirmed accurate to 125 mph winds, -43 (wind chill –83)/+122 degrees Fahrenheit. Sonar wind sensor, impact rain sensor
- WeatherVision™ Outdoor HD Camera w/ Dual Lenses and up to 20X Zoom
- Ruggedized, anti-corrosive high impact materials, confirmed accurate to 125 mph winds, -43 (wind chill –83)/+122 degrees Fahrenheit
- WeatherVision™ Camera Software Packages
- WeatherVision Pan/Tilt/Zoom Unit and Controller
- Non-penetrating roof mount galvanized steel
- Managed PC computer pre-configured included
- Up to 250' of cabling for installation
- All hardware required for installation

StreamVision Services Provided

StreamVision – Hosted Website Streaming

- The base StreamVision plan includes 20,000 viewer-minutes for each StreamVision Camera.

- A viewer-minute is defined as each minute a viewer watches a video feed on the "CUSTOMER'S" Website rounded up to the next minute.

- The total viewer minutes for all of the cameras in a StreamVision contract are shared between all of the cameras in the contract. If "CUSTOMER" uses more than the allotted viewer-minutes "CUSTOMER" is billed <u>$0.0025 (.25/100's dollars)</u> per additional viewer-minute.

LICENSE AGREEMENT

This agreement is made this ____ day of _____, 2012 by and between the City of Windcrest, hereinafter referred to as "Licensee", and Windcrest Golf Club, Inc., hereinafter referred to as "Licensor".

WHEREAS, the Licensor is the owner of the golf course and related facilities located at 8600 Midcrown, Windcrest, Bexar County, Texas, hereinafter referred to as the "Property"; and

WHEREAS, Licensee desires to install and operate a remotely controlled camera on the Property of Licensor in order to observe weather conditions and other images in order to promote the public safety and welfare of the citizens of the City of Windcrest; and

WHEREAS, Licensor desires to authorize Licensee to install and operate such camera as a public service to the community.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, for a good and valuable consideration, it is agreed as follows:

Grant of License

1. Licensor hereby agrees, grants and demises unto the Licensee the right to install and operate a remotely controlled camera on the Property of Licensor at a location mutually agreeable to both parties. Licensor grants to Licensee authority to enter upon the Property of Licensor to maintain said camera at any time Licensee needs access to said camera.

Term of License

2. The initial term of this License shall be five (5) years, commencing on _____ ___, 2012. This License shall renew automatically for one year additional terms commencing upon the expiration of the initial license term.

Consideration

3. The consideration for this license is the contribution Licensor is making for the public safety and welfare. Licensor is a Texas non-profit corporation which, among other purposes, promotes the public good.

Repairs and Improvements

4. Licensee shall maintain the camera in good and safe condition during the term of this license.

Insurance

5. Licensee maintains general public liability insurance for damage to property and injury or death to persons arising out of and in connection with its activities.

Nonassignable

6. This license is personal to the Licensee and is nonassignable and any attempt to assign this license will terminate the license privileges granted to Licensee herein.

This agreement is been executed by the parties on the date and year first above written.

Windcrest Golf Club, Inc.

By:_____
President:

ATTEST:

_____
Secretary

CITY OF WINDCREST

By:_____
Rafael Castillo, City Manager

ATTEST:

_____
City Secretary

RESOLUTION NO. 2012-413 (R)

A RESOLUTION OF THE CITY OF WINDCREST, TEXAS, MAKING THE FOLLOWING CHANGES TO THE CITY'S GENERAL ELECTIONS PURSUANT TO SENATE BILL 100, EIGHTY-SECOND REGULAR LEGISLATURE AND PROVIDING FOR SEVERABILITY.

WHEREAS, the federal Help America Vote Act of 2002 (HAVA), found in 42 U.S.C. § 15481 (a)(3), mandates that, for elections in which a federal office is on the ballot, each polling place must be equipped with an electronic voting machine to facilitate voting by those with disabilities; and

WHEREAS, the Texas Legislature implemented HAVA in the 2003 regular session with the passage of House Bill 1549, but expanded the scope of the electronic voting machine requirement to apply to any election held in the state, with limited exceptions; and

WHEREAS, the federal Military and Overseas Voter Act of 2009 (MOVE Act), found in 42 U.S.C. § 1973ff-1, provides for an extended timetable in which absentee ballots be transmitted to uniformed and overseas citizens at least 45 days prior to an election; and

WHEREAS, the Texas Legislature implemented the MOVE Act in 2011 with the passage of Senate Bill 100, which overlaid the period between the state's primary and primary runoff election upon the most commonly-used uniform election date for the municipal general election, which is the second Saturday in May; and

WHEREAS, many counties in Texas have concluded that, in even-numbered years (the years in which the state's primary and primary runoff elections are held), they will be unable to provide to their cities, through sharing, lease, or other means, the electronic voting machines that are required by the aforementioned federal and state laws; and

WHEREAS, the City of Windcrest currently holds its general election on the uniform election date on the second Saturday in May; and

WHEREAS, pursuant to Senate Bill 100 and other statutory and state constitutional provisions, the City of Windcrest is through the adoption of this resolution and any other necessary means making best efforts to modify its election procedures to be in compliance with the bill and other federal and state laws; and

WHEREAS, the City Council of the City of Windcrest believes it is to the advantage of the City, its citizens, and the pursuit of democracy to pass such a resolution because such changed voting dates will increase voter participation in the general elections of Windcrest.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Windcrest, Texas, that:

1. That the annual general elections in the City of Windcrest shall be held on the November election date provided in Section 41.001 of the Texas Election Code. The new election schedule shall commence with the annual general election scheduled in 2013. The terms of office for the Mayor and City Council members scheduled to be voted on in 2013 shall be extended one time only to the new election date in November, 2013 and the terms of office for the City Council members scheduled to be voted on in 2014 shall be extended one time only to the new election date in November, 2014.

2. Should any section or part of this resolution be held unconstitutional, illegal, or invalid, or the application to any person or circumstance for any reasons thereof ineffective or inapplicable, such unconstitutionality, illegality, invalidity, or ineffectiveness of such section or part shall in no way affect, impair, or invalidate the remaining portion or portions thereof; but as to such remaining portion or portions, the same shall be and remain in full force and effect and to this end the provisions of this resolution are declared to be severable.

DULY PASSED AND APPROVED, on the ___ day of November, 2012 at a regular meeting of the City Council of the City of Windcrest, Texas, which meeting was held in compliance with the Open Meetings Act, Tex. Gov't. Code, §551.001, et. seq. at which meeting a quorum was present and voting.

CITY OF WINDCREST, TEXAS

BY:_____
Alan Baxter, Mayor

ATTEST:

_____
Kelly Rodriguez, Assistant City Secretary

APPROVED:

_____
Michael S. Brenan, City Attorney

the City Council of the City of Windcrest, Texas.

10. Additional Regulations. The applicable portions of Chapter 4, Signs, and Chapter 22, Yards (Fences, Pools, Sprinklers, Satellite Dish Antennas, Amateur Radio Antenna Towers, and Wireless Cable Television Antennas), shall apply to the placing and construction of signs, fences, pools, sprinklers, satellite dish antennas, Amateur Radio Antenna Towers, and wireless cable television antennas. (Ord. No. 213, 271, 11/14/88, 7/6/94)

Subchapt. 23.900 "R-1" ONE-FAMILY DWELLING DISTRICT

The following regulations shall apply to the "R-1" One-Family Dwelling District:

Sec. 23.901 USE REGULATIONS

A building or premises shall be used only for the following purposes:

1. Single-family dwellings. (Ord. No. 58, 8/14/67)

2. Church (except temporary revival) (Ord. No. 58, 8/14/67), to include normal functions such as schools, child care and bazaars. (Ord. No. 58RR, 8/13/82).

3. School, public or private, having a curriculum equal to a public elementary, high school, or institution of higher learning. (Ord. No. 58, 8/14/67)

4. Public parks, playgrounds, swimming pools (public or private), golf courses (except miniature golf) and golf clubs (public or private and related golf pro shops, residential tennis courts, tennis courts and clubs (public or private) and related tennis pro shops, arts and crafts shops and/or facilities (public or private), public recreation and community buildings. (Ord No. 58RR, 9/13/82)

5. Municipal buildings, non-profit libraries or museums, police and fire stations.

6. Customary home occupations set forth in Subchapter 23.500-22 of this Chapter.

7. Country clubs. (Ord. No. 58RR, 9/13/82)

8. Water tanks and towers. (Ord. No. 58, 8/14/67)

9. Accessory buildings and accessory uses, customarily incident to the above uses when located on the same lot, including a private garage for one or more cars, and/or bona fide servant's quarters not for rent or used for commercial purposes. (Ord. No. 58, 8/14/67)

10. Signs authorized in accordance with Chapter,4 of the Code.

Sec. 23.902 HEIGHT REGULATIONS

1. No building shall exceed two and one-half (2-1/2) stories or thirty-five feet (35') in height, except as provided in Section 23.1403 hereof. (Ord. No. 212, 11/14/88)

2. A ground installed Amateur Radio Antenna Tower shall not

exceed 65 feet in height. (Ord. No. 213, 11/14/88)

3. Wireless television cable system structures will not extend more than 10' above the highest roof line of a structure. (Ord. No. 271, 7/6/94)

Sec. 23.903 YARD REGULATIONS

1. Front Yard: There shall be a front yard along the front line of the lot. The minimum depth of such front yard shall be twenty-five feet(25').

2. Side Yard: There shall be a side yard on each side of a building of not less than ten percent (10%) of the width of the lot, but such side yard shall not be less than ten feet (10').

Sec. 23.904 INTENSITY OF USE

Every lot or tract of land shall have an area of not less than ten thousand (10,000) square feet and an average width of not less than ninety feet (90'), except that if a lot or tract should have less area or width than is herein required and its boundary lines along their entire length should touch lands under other ownership on the effective date of Ordinance No. 58 and shall not have been changed since said date, such parcel of land may be used for a single-family dwelling.

Sec. 23.905 ADDITIONAL REGULATIONS

Additional use, height, and area regulations and exceptions are found in Subchapter 23.1400 of this Chapter. (Ord. No. 58, 8/14/67)

Sec. 23.906 PARKING REGULATIONS

For purposes of this section, the terms motor vehicle, large motor vehicle, front yard, rear yard and side yard shall have the meaning stated in Section 20.1202 of the Windcrest Code of Ordinances. It shall be lawful to park one (1) motor vehicle twenty-two (22') or less in length and seven feet (7') or less in height for each licensed driver residing in a residence, plus one additional motor vehicle or boat. If the additional motor vehicle or boat is greater than twenty-two feet (22') in length or seven feet (7') in height, it must be parked in the rear yard of the residence. All motor vehicles and boats shall be parked on permanently maintained parking areas constructed of concrete, asphalt or gravel with barriers or permanent curbing to define the parking area. Rear yard parking areas must be constructed in the same areas in which accessory buildings are authorized.

The following exceptions to the limitations imposed on the parking of large motor vehicles in the preceding paragraph shall apply:

1. A resident may park a large motor vehicle in the front or side yard of a residence each week for the limited purposes of preparing, loading and unloading such vehicle for weekend use between the hours of noon on Friday and noon on the following Saturday and between the hours of noon on Sunday and noon on the following Monday, plus a resident may park a large motor vehicle in the front or side yard of a residence for the limited purposes of preparing, loading and unloading such vehicle for two (2) additional trips per calendar month, with the total preparation, loading and unloading time for each additional trip to be limited to forty-eight (48) hours for each trip. While such large motor vehicles are lawfully parked in front or side yards of a residence, normal preparation for the use of such vehicles is authorized, including cleaning and

washing, changing fluids and minor repairs. (Ord. No. 332, 12/21/98)

2. A bonafide guest or visitor of a resident may park a large motor vehicle in the front or side yard of such residence for not more than seven (7) days during any calendar month.

3. The owner of a large motor vehicle parked in the front or side yard of a residence at the date of the adoption of this Chapter may continue to park such large motor vehicle in the same location until March 23, 1999. This exception shall expire upon the disposition of such large motor vehicle, the disposition of the residence by the owner of the large motor vehicle, or at the time the owner of the large motor vehicle vacates the residence, whichever event occurs first, provided that under no circumstances shall the exception continue after March 23, 1999.

It shall be unlawful for any person to park, or allow same to be parked, any motor vehicle or boat in a residential district of the City except as authorized in this section. It shall be unlawful to use a motor vehicle or boat in a residential district of the City for dwelling, sleeping, business or entertainment purposes, or to connect a motor vehicle or boat to sanitary sewer facilities. No motor vehicle or boat may be parked within five (5) feet of the front or side curb line of a residence. No major maintenance or repair work shall be performed on a large motor vehicle in a residential district of the City, such as but not limited to, replacement or modification of mechanical and interior components and any work which requires lifting or raising of the vehicle. (Ord. No. 332, 12/21/98)

Sec. 23.907 PARKING AREAS

A permanently maintained parking area which connects a garage or carport to a street or alley may not be wider than twenty feet (20') when adjacent to a two car garage or thirty feet (30') when adjacent to a three car garage. Permanently maintained parking areas wider than twenty feet (20') and constructed prior to the effective date of the Code of Ordinances, shall be exempt from the twenty feet (20') limitation set forth above. However, after the effective date of this Code of Ordinances, no building permit shall be issued by the City Building Permit Officer for the erection, siting, construction, alteration, reconstruction or enlargement of permanently maintained parking area in excess of twenty feet (20') for a two car garage or thirty feet (30') for a three car garage unless it is first approved by the City Council after a showing by the applicant of a special need for such granter width due to the size of or topography of the lot, the design of location of the residence, or other good reason approved by the City Council in its sole and absolute discretion. (Ord. No. 327, 9/21/98)

Subchapt. 23.1000 "R-2" DUPLEX AND APARTMENT DISTRICT

The following regulations shall apply to "R-2" Duplex and Apartment District:

Sec. 23.1001 USE REGULATIONS

A building or premises shall be used for the following purposes:

1. Any use permitted in the "R-1" One-Family Dwelling District.

2. Two-Family or Duplex Dwellings. (Ord. No. 58, 8/14/67)

3. Apartment Houses or Multiple Family Dwellings (Ord. No. 58, 8/14/67), including condominiums, Chapter 82, Texas Property Code. (Ord. No 311, 9/15/97)

4. Private clubs, fraternities, sororities and lodges, excepting those the chief activity of which is a service customarily carried on as a business. (Ord. No. 58, 8/14/67)

5. Institution of a religious, educational or philanthropic nature.

6. Signs authorized in accordance with Chapter 4 of the Code.

Sec. 23.1002 HEIGHT REGULATIONS

No building or structure shall exceed two and one-half (2-1/2) stories or thirty-five feet (35') in height, except as provided in Section 23.1403 hereof.

Sec. 23.1003 YARD REGULATIONS

1. Front Yard: There shall be a front yard along the front line of the lot. The minimum depth of such front yard shall be twenty-five feet (25'). (Ord. No. 58, 8/14/67)

2. Side Yards: There shall be a side yard on each side of a building of not less than ten percent (10%) of the width of the lot, but such side yard shall not be less than ten feet (10').

Sec. 23.1004 INTENSITY OF USE

Except as hereinafter provided, all dwellings hereafter erected, enlarged, relocated, or reconstructed, shall be located on lots containing the following areas:

1. A lot on which there is erected a single-family dwelling shall contain an area of not less than ten thousand (10,000) square feet.

2. A lot on which there is erected a two-family dwelling shall contain an area of not less than ten thousand (10,000) square feet.

3. A lot on which there is erected an apartment house or multiple-family dwelling shall contain an area not less than one thousand eight hundred (1,800) square feet of land per dwelling unit.

4. Where a lot or tract has less area than herein required and its boundary lines along their entire length touched lands under other ownership on the effective date of this Chapter and have not since been changed, such parcel of land may be used for a single-family dwelling. (Ord. No. 58, 8/14/67)

Sec. 23.1005 PARKING REGULATIONS

The parking regulations and parking area requirements of the "R-1" District shall apply. Furthermore, whenever a structure is erected, converted, or structurally altered for a two-family or multiple-family dwelling, two (2) parking spaces shall be provided and maintained on the lot for each dwelling unit in the building. Such parking space shall be on the lot and so arranged as to permit satisfactory egress and ingress of an automobile, and such parking area shall be in addition to driveways. (Ord. No. 58G, 327; 10/11/71, 9/21/98)

Sec. 23.1006 ADDITIONAL REGULATIONS

Additional use and height and area regulations and exceptions are found in Subchapter 23.1400 herein. (Ord. No. 58, 8/14/67)

Subchapt. 23.1100 "O-1" PROFESSIONAL OFFICE DISTRICT

The following regulations shall apply to the "O-1" Professional Office District:

Sec. 23.1101 USE REGULATIONS

A building or premises shall be used only for the following purposes:

1. Any use permitted in the "R-1" and "R-2" Districts.

2. Offices for physicians, dentists, architects, insurance agents, attorneys, real estate appraisers, and other office uses having similar characteristics.

3. Signs authorized in accordance with Chapter 4 of the Code.

4. No merchandise of any type may be displayed, leased, exchanged or sold. (Ord. No. 58TT, 6/13/83)

5. Disposal of infectious waste shall be in accordance with current guidelines required by the Occupational Safety and Health Administration and the Texas Natural Resource and Conservation Commission. (added by Council Action, 2/14/01)

Sec. 23.1102 HEIGHT REGULATIONS

No building or structure shall exceed two and one-half (2-1/2) stories or thirty-five feet (35') in height, except as provided in Section 23.1403 hereof. (Ord. No. 58TT, 6/13/83)

Sec. 23.1103 YARD REGULATIONS

1. Front Yard: There shall be a front yard along the front line of the lot. The minimum depth of such front yard shall be twenty-five feet (25') from the front lot line. (Ord. No. 58TT, 6/13/83)

2. Side Yards:

a. For uses permitted in the "R-1" District, the side yard regulation for that District shall apply.

b. For uses permitted in the "R-2" District, the side yard regulations for that District shall apply.

c. For additional uses permitted in the "O-1" District, the side yard regulations shall be ten feet (10'). When abutting either an "R-1" or "R-2" Zone, the side yard regulation shall be twenty-five fee (25'). (Ord. No. 58TT, 6/13/83)

Sec. 23.1104 INTENSITY OF USE

1. For uses permitted in the "R-1" and "R-2" Districts, the

applicable minimum lot area and minimum lot width for such District based on permitted use shall apply. (Ord. No. 58TT, 6/13/83)

2. For additional uses permitted in the "O-1" District, the minimum lot area shall be eighteen thousand (18,000) square feet and the minimum lot width shall be one hundred fifty feet (150'). (Ord. No. 58TT, 6/13/83)

Sec. 23.1105 PARKING REGULATIONS

1. The parking regulations for uses permitted in the "R-1" and "R-2" Districts shall be the same as those in the "R-2" District. (Ord. No. 58TT, 6/13/83)

2. For the additional uses permitted in the "O-1" District, one parking space for each three hundred (300) square feet or a portion thereof of gross floor area. (Ord. No. 58TT, 6/13/83)

Sec. 23.1106 ADDITIONAL REGULATIONS

Additional use, height and area regulations and exceptions are found in Subchapter 23.1400 herein. (Ord. No. 58TT, 6/13/83)

Sec. 23.1107 SCREENING OF REFUSE STORAGE AREAS

All offices shall screen areas wherein garbage containers and other refuse are stored with a permanent type masonry or wooden enclosure on all sides exposed to public view with a concrete base and apron. (Ord. No. 58TT 6/13/83)

Sec. 23.1108 PLATTED LOTS

Platted lots used for office purposes may contain one (1) or more buildings provided the buildings are situated in substantial compliance with the comprehensive plan created by this Chapter. (Ord. No. 58TT, 6/13/83)

Sec. 23.1109 SCREENING OF AIR CONDITIONING ELEMENTS

All offices shall screen air conditioning elements with a permanent type masonry, metal or wooden screen on all sides which are open to public view. (Ord. No. 58TT, 6/13/83)

Sec. 23.1110 GREEN BELT

A minimum of ten feet (10') of landscaped green belt area must be dedicated and maintained as a buffer zone between the "O-1" District and either the "R-1" or "R-2" Districts wherever the Districts' lines are adjacent. This ten feet (10') may be part of the twenty-five (25) foot side yard mentioned in Section 23.1003-2C. (Ord. No. 58TT, 6/13/83)

Subchapt. 23.1200 "B-1" NEIGHBORHOOD BUSINESS DISTRICT

The following regulations shall apply to "B-1" Neighborhood Business District:

Sec. 23.1201 USE REGULATIONS

A building or premises shall be used only for the following purposes:

1. Any use permitted in "O-1" Professional Office District.

(Ord. No. 58, 8/14/67)

2. Signs authorized in accordance with Chapter 4 of the Code.

3. Automobile parking lots. (Ord. No. 58, 8/14/67)

4. Bakery, employing not more than five (5) persons. (Ord. No. 58, 8/14/67)

5. Bank. (Ord. No. 58, 8/14/67)

6. Beauty Parlor. (Ord. No. 58, 8/14/67)

7. Barber Shop. (Ord. No. 58, 8/14/67)

8. Cleaning, pressing, and dyeing plants employing not more than five (5) persons each.

9. Clinic. (Ord. No. 58, 8/14/67)

10. Hotels and motels. (Ord. No. 58UU, 9/12/83)

11. Laundries, employing not more than five (5) persons on the premises.

12. Laundries, self-service. (Ord. No. 58, 8/14/67)

13. Job printing, provided total mechanical power use in operation of such printing plant shall not exceed five (5) horsepower. (Ord. No 58, 8/14/67)

14. Lodge halls. (Ord. No. 58, 8/14/67)

15. Offices. (Ord. No. 58, 8/14/67)

16. Radio repair and sale shops. (Ord. No. 58, 8/14/67)

17. Radio studios. (Ord. No. 58, 8/14/67)

18. Restaurant, cafes and cafeterias. (Ord. No. 58, 8/14/67)

19. Stores and shops for sale of products at retail only, but not to include second hand clothing stores, flea markets and similar establishments, public saloons, taverns or bars. The storage and/or sale of motor vehicle fuel at wholesale or retail is prohibited (Ord. No. 58II, 9/14/81)

If a permit has first been obtained from the City, the business which currently occupies the permanent structure on the premises from which the business is conducted may display and sell goods, wares and merchandise outside its permanent structure which are customarily displayed and sold by it inside it permanent structure. The outdoor display and sale of such merchandise shall be classified as temporary (thirty [30] days or less) or permanent (more than thirty [30] days).

A <u>temporary permit</u> may be issued by the City for the display and sale of goods, wares and merchandise upon a showing by a business that the outdoor display and sale of such merchandise will not interfere with parking and access and that such activity will be safe and compatible with adjoining businesses and the neighborhood.

A permanent permit may be issued by the City for the display and sale of goods, wares and merchandise upon a showing by a business that the outdoor display and sale of such merchandise will not occur in parking areas, driveways and required landscape areas, and that such activity will be safe and compatible with the adjoining businesses and the neighborhood. (Ord. No. 311, 9/15/97)

20. Studio (art, photo, music). (Ord. No. 58, 8/14/67)

21. Recreation and entertainment facilities, (theaters, bowling alleys, billiard parlors, skating halls, gymnasiums and health or exercise centers and similar activities) excepting public saloons, taverns, or bars. (Ord. No. 58W, 213, 4/12/76, 12/12/88)

Sec. 23.1202 HEIGHT REGULATIONS

No building or structure shall exceed two and one-half (2-1/2) stories or thirty-five feet (35') in height except for antennas in 23.80 and certain signs in Chapter 4. (Ord. No. 58, 8/14/67)

Sec. 23.1203 YARD REGULATIONS

1. Front Yard: There shall be a front yard along the front line of the lot. The minimum depth of such front yard shall be twenty feet (20'). (Ord. No. 58, 8/14/67)

2. Side Yards: For uses permitted in the "R-2" District, the side yard regulations for that District shall apply. For additional uses permitted in the "B-1" District, no side yards are required except that on a corner lot the side yard on the street side shall be twenty feet (20'). Where a lot is used for any of the commercial purposes permitted in this District and abutting on the side of a lot in an "R-1" or "R-2" District, there shall be a side yard not less than twenty-five feet (25').

Sec. 23.1204 INTENSITY OF USE

For uses permitted in the "R-2" District, the minimum lot area and minimum width regulations for that District shall apply. There are no minimum lot area or lot width requirements for other uses. (Ord. No. 58, 8/14/67)

Sec. 23.1205 PARKING REGULATIONS

1. The parking regulations for dwelling are the same as those in the "R-2" District. (Ord. No. 58, 8/14/67)

2. Where any structure is erected, reconstructed or converted for any of the business or commercial uses permitted in this Subchapter, off-street parking spaces shall be provided, whether on the same lot with structure or on an area within three hundred feet (300') thereof, in such number as the City Council shall deem adequate, based on such factors as the nature of proposed business use, expected customer density and rate of customer turn-over. Generally, parking space requirements shall be based on the gross floor area of the structure to be served and shall conform to the respective requirements set forth in the Table of Off-Street Parking Requirements contained in Section 42-94, 1970 Zoning Ordinance of the City of San Antonio, Texas, which Table is, by this reference, hereby expressly adopted for the City of Windcrest as a planning guide only. The City Council may require more parking spaces for any specific business structure than are indicated in said adopted Table, but no plan providing for less than the number of parking spaces therein indicated shall be approved, in the absence of clear and convincing evidence that the number of

parking spaces indicated in the Table will not reasonably be required by the proposed business use. Two or more building owners may join together in providing a common parking area, but the total number of parking spaces therein shall be sufficient to satisfy the combined individual use parking space requirements herein stated for all structures that are proposed to be open for business at the same time. The minimum size for a parking space will be 9' x 18'. (Ord. No. 243, 4/8/91)

TABLE OF OFF-STREET PARKING REQUIREMENTS

USES	PARKING REQUIREMENTS
Churches, Theaters, Gymnasiums	One space for each four seats
Clinics	One space for each 200 sq. ft. gross floor area
General business, commercial & personal service establishments	One space for each 200 sq. ft. of gross retail/sales service area and one space per 800 sq. ft. gross storage area, or one space per 400 sq. ft. of combined retail sales/service area with no dedicated warehousing area.
General office	One space for each 300 sq. ft. of gross floor area
Hotels, Motels	One space for each guest room or trailer space and one space for each two employees (associated commercial or retail areas require additional spaces)
Nursing, rehabilitation and assisted living facilities	One space for each four beds
Clubs, lodges	One space for ea. 300 sq. ft. of gross floor area
Multi-family dwellings	Two spaces for each family dwelling unit
Restaurants, cafeterias	One space for ea. 100 sq. ft. of gross floor area
Schools, elementary	Two spaces for each classroom plus two spaces for each office
Schools, junior	Three spaces for each classroom plus three spaces for each office
Schools, secondary	Six spaces for each classroom plus six spaces for each office
Single-family dwellings	Two spaces for each dwelling unit
Skating rinks and commercial amusement	One space for each 100 sq. ft. gross floor area. For uses not requiring a building, one space for each 800 sq.

ft. of ground area shall be provided
(Table changed by Council Action, 2/14/01)

Sec. 23.1206 ADDITIONAL REGULATIONS

Additional use, height, and area regulations and exceptions are found in Section 23.1400 of this Chapter. (Ord. No. 58, 8/14/67)

Sec. 23.1207 SCREENING OF REFUSE STORAGE AREAS

All commercial establishments shall screen areas wherein garbage containers and other refuse are stored with a permanent type masonry or wooden enclosure on all sides exposed to public view with a concrete base and apron. (Ord. No. 58Q, 4/8/74)

Sec. 23.1208 PLATTED LOTS

Platted lots used for commercial purposes may contain on (1) or more main buildings provided the buildings are situated in substantial compliance with the comprehensive plan created by this Chapter. (Ord. No. 58I, 1/8/73)

Sec. 23.1209 SCREENING OF AIR CONDITIONING ELEMENTS

All commercial establishments shall screen air conditioning elements with a permanent type masonry, metal or wooden screen on all sides open to public view. (Ord. No. 58Q, 4/8/74)

Sec. 23.1210 LANDSCAPING

1. Landscaping and appropriate irrigation systems are required when B-1 and B-2 properties are developed.

2. Where B-1 and B-2 property abuts tracts zoned (for residential use (R-1, R-2), the required width of the landscape area shall be a minimum of fifteen (15) feet and require privacy screening of 8' masonry fencing in combination with shrubs and trees.

3. Landscaping within a triangular area formed by intersecting street lines shall comply with the requirements of section 23.1103.2.

4. An eight-foot wide landscape area must be provided along the entire length of each property line bordering streets. Not more than fifty (50) percent of each landscape area shall receive impervious cover. Where a sidewalk is in place, the landscape area will not be less than four (4) feet between sidewalk and parking.

5. Landscaping shall not obstruct the view between the street and the access drives and parking aisles near the front yard entries and exits, nor shall any landscaping which creates an obstruction of view be located within the radius of any curb return. (Sec. 23.1404, 5c)

Subchapt. 23.1300 "B-2" BUSINESS DISTRICT

The following regulations shall apply to the "B-2" Business District:

Sec. 23.1301 USE REGULATIONS

A building or premises shall be used only for the

following purposes:

1. Any use permitted in "B-1" Neighborhood Business District; Outdoor sales are restricted as in Sec. 23.1101.

2. Automobile sales and service facilities including sales, service, and installation of automobile parts, components and accessories, provided that such service and installation shall be performed completely indoors, within the retail sales establishment which has sold those items. Storage or sale of motor vehicle fuel is prohibited.

Sec. 23.1302 HEIGHT REGULATIONS

No building or structure shall exceed two and one-half (2 1/2) stories or thirty-five feet (35') in height.

Sec. 23.1303 YARD REGULATIONS

1. Front Yard: There shall be a front yard along the front line of the lot. The minimum depth of such front yard shall be twenty feet (20')

2. Side Yard: For uses permitted in the "R-2", "O-1" and "B 1" Districts, the side yard regulations for that District shall apply. For additional uses permitted in the "B-2" District, the side yard regulations for the"B-1" District shall apply.

Sec. 23.1304 INTENSITY OF USE

For uses permitted in the "R-2" District, the minimum lot area and minimum width regulations for that District shall apply. There are no minimum lot area or lot width requirements for other uses.

Sec. 23.1305 PARKING REGULATIONS

1. For parking regulations in the "R-1", "R-2", "O-1" and "B-1" Districts, parking regulations for such Districts based on permitted use shall apply.

2. For parking regulations in the "B-2" District, the parking regulations and table of off-street parking requirements for the "B-1" District shall apply.

Sec. 23.1306 ADDITIONAL REGULATIONS

Additional use, height, and area regulations and exceptions are found in Section 23.1400 of this Chapter.

Sec. 23.1307 SCREENING OF REFUSE STORAGE AREAS

All commercial establishments shall screen areas wherein garbage containers and other refuse are stored with a permanent type masonry or wooden enclosure on all sides exposed to public view with a concrete base and apron.

Sec. 23.1308 PLATTED LOTS

Platted lots used for commercial purposes may contain on (1) or more main buildings provided the buildings are situated in substantial compliance with the comprehensive plan created by this Chapter.

Sec. 23.1309 SCREENING OF AIR CONDITIONING ELEMENTS

All commercial establishments shall screen air conditioning elements with a permanent type masonry, metal or wooden screen on all sides open to public view. (Ord. No. 205, 8/8/88)

Sec. 23.1310 LANDSCAPING

Landscaping requirements are the same as in 23.1210.

Subchapt. 23.1400 PARKS AND OTHER AREAS FOR PUBLIC USE

The public policy of the City of Windcrest is to encourage the dedicating of a reasonable percentage of the tract for use as a community playground and recreational area. Specific requirements for dedication of such areas shall be as provided in the Parks and other Public Use Areas Ordinance in effect, if any, at the time such dedication is made.

Subchapt. 23.1500 ADDITIONAL USE, HEIGHT, AND AREA REGULATIONS AND EXCEPTIONS

Sec. 23.1501 USE REGULATIONS

No accessory building shall be constructed upon a lot until the construction of the main use building has been actually commenced. No accessory building shall be used unless the main use building on the lot is also being used. (Ord. No. 58, 8/14/67)

Sec. 23.1502 HOTELS AND MOTELS

1. Swimming Pools. Motels and Hotels maintaining and operating swimming pools shall post rules regulating behavior, and other rules necessary to ensure the safety of the patrons. All hotels and motels must conform to Ordinances of the City of Windcrest regulating the use of swimming pools and the requirements of the Public Health Statutes of the State of Texas. (Ord. No. 58UU, 9/12/83)

2. Smoke Detectors. Each hotel or motel must install and maintain in good working order a smoke detector, as that term is defined in Tex. Rev. Civ. Stat. Ann. Art. 4596d (Vernon), in each guest room, corridor, kitchen, business office, restaurant, mechanical room, and in any and all other common and/or public areas. The smoke detectors shall be installed, operated, and maintained so that they are at all times physically connected to a central fire alarm system which shall be physically located within the structure (hotel or motel) and which shall be monitored twenty-four (24) hours a day. The central fire alarm system shall include a manually operated alarm that, upon activation by the monitor of the system, emits an audible signal capable of being heard by all occupants of the structure instantaneously notifying them to immediately vacate the premises. These requirements are in addition to, and an expansion of, any and all requirements as found in the Life Safety Code, the Uniform Building Code, the Uniform Fire Code, and/or any other applicable Windcrest City Ordinance and/or State Law. In the event of a conflict between this Subsection and any such law, this subsection shall control. (Ord. No. 58YY, 2/11/85)

3. Fire Extinguishing System. All hotel and motel guest rooms, corridors, kitchens, business offices, restaurants, coffee shops, mechanical rooms, etc., and any and all other common and/or public areas, shall be protected by an automatic fire extinguishing system. Such an automatic fire extinguishing system shall be designed, installed, maintained, and serviced in accordance with current National Fire Protection Association Standards. In addition, the automatic fire extinguishing system shall be installed, operated, and thereafter, maintained so that it is at all times physically connected to the central fire alarm system. These requirements are in addition to, and an

the City Council of the City of Windcrest, Texas.

10. Additional Regulations. The applicable portions of Chapter 4, Signs, and Chapter 22, Yards (Fences, Pools, Sprinklers, Satellite Dish Antennas, Amateur Radio Antenna Towers, and Wireless Cable Television Antennas), shall apply to the placing and construction of signs, fences, pools, sprinklers, satellite dish antennas, Amateur Radio Antenna Towers, and wireless cable television antennas. (Ord. No. 213, 271, 11/14/88, 7/6/94)

Subchapt. 23.900 "R-1" ONE-FAMILY DWELLING DISTRICT

The following regulations shall apply to the "R-1" One-Family Dwelling District:

Sec. 23.901 USE REGULATIONS

A building or premises shall be used only for the following purposes:

1. Single-family dwellings. (Ord. No. 58, 8/14/67)

2. Church (except temporary revival) (Ord. No. 58, 8/14/67), to include normal functions such as schools, child care and bazaars. (Ord. No. 58RR, 8/13/82).

3. School, public or private, having a curriculum equal to a public elementary, high school, or institution of higher learning. (Ord. No. 58, 8/14/67)

4. Public parks, playgrounds, swimming pools (public or private), golf courses (except miniature golf) and golf clubs (public or private and related golf pro shops, residential tennis courts, tennis courts and clubs (public or private) and related tennis pro shops, arts and crafts shops and/or facilities (public or private), public recreation and community buildings. (Ord No. 58RR, 9/13/82)

5. Municipal buildings, non-profit libraries or museums, police and fire stations.

6. Customary home occupations set forth in Subchapter 23.500-22 of this Chapter.

7. Country clubs. (Ord. No. 58RR, 9/13/82)

8. Water tanks and towers. (Ord. No. 58, 8/14/67)

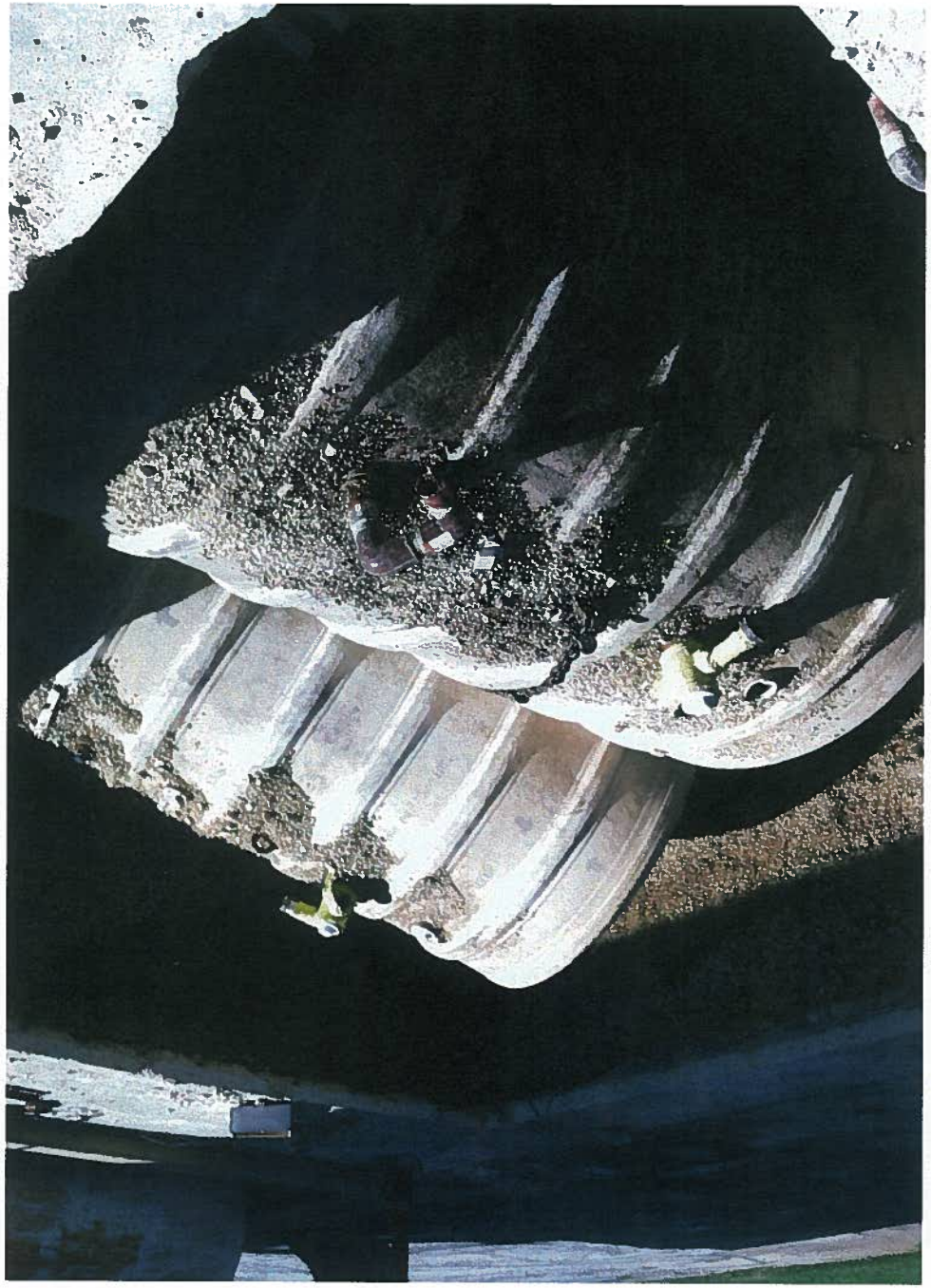
9. Accessory buildings and accessory uses, customarily incident to the above uses when located on the same lot, including a private garage for one or more cars, and/or bona fide servant's quarters not for rent or used for commercial purposes. (Ord. No. 58, 8/14/67)

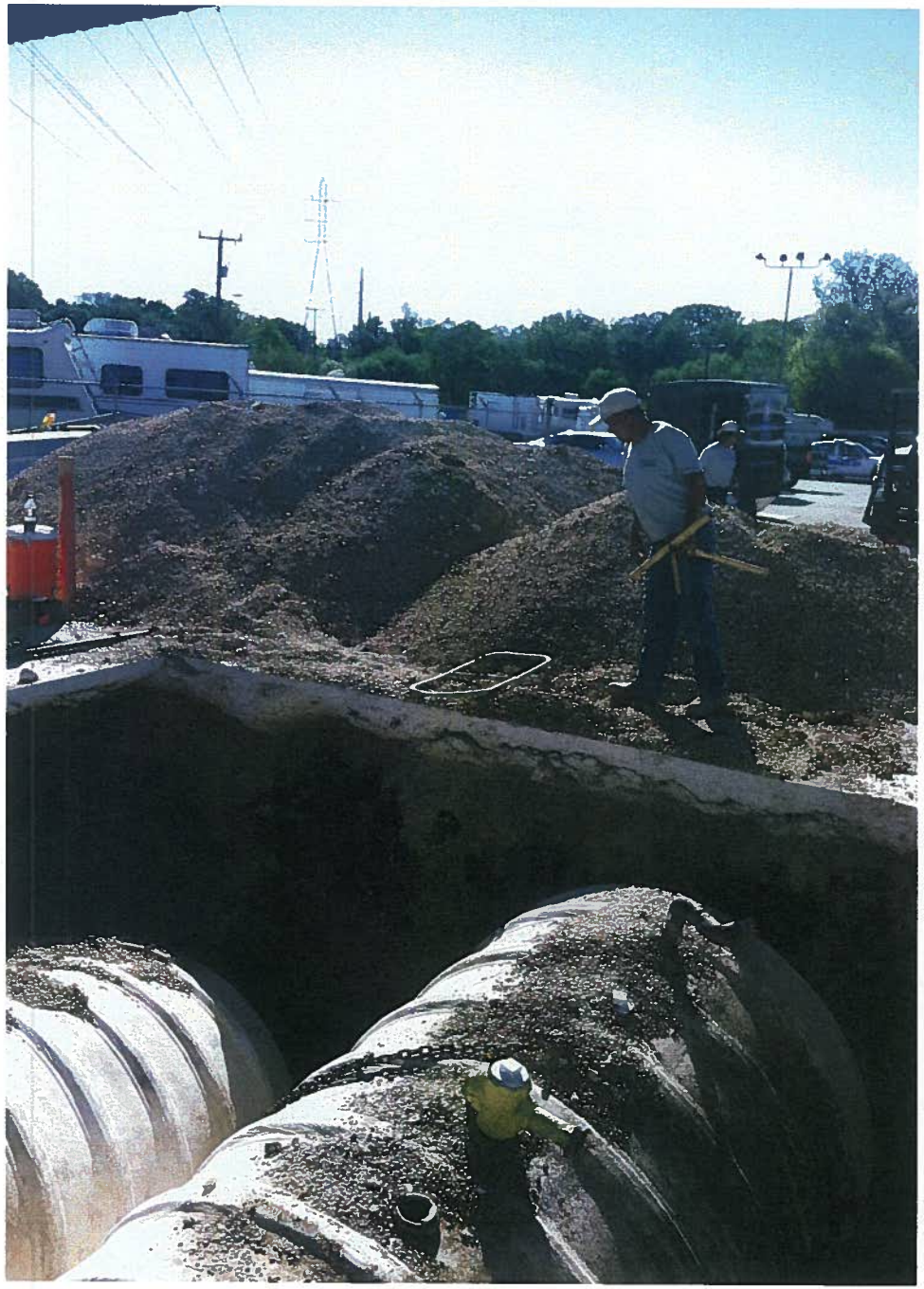
10. Signs authorized in accordance with Chapter,4 of the Code.

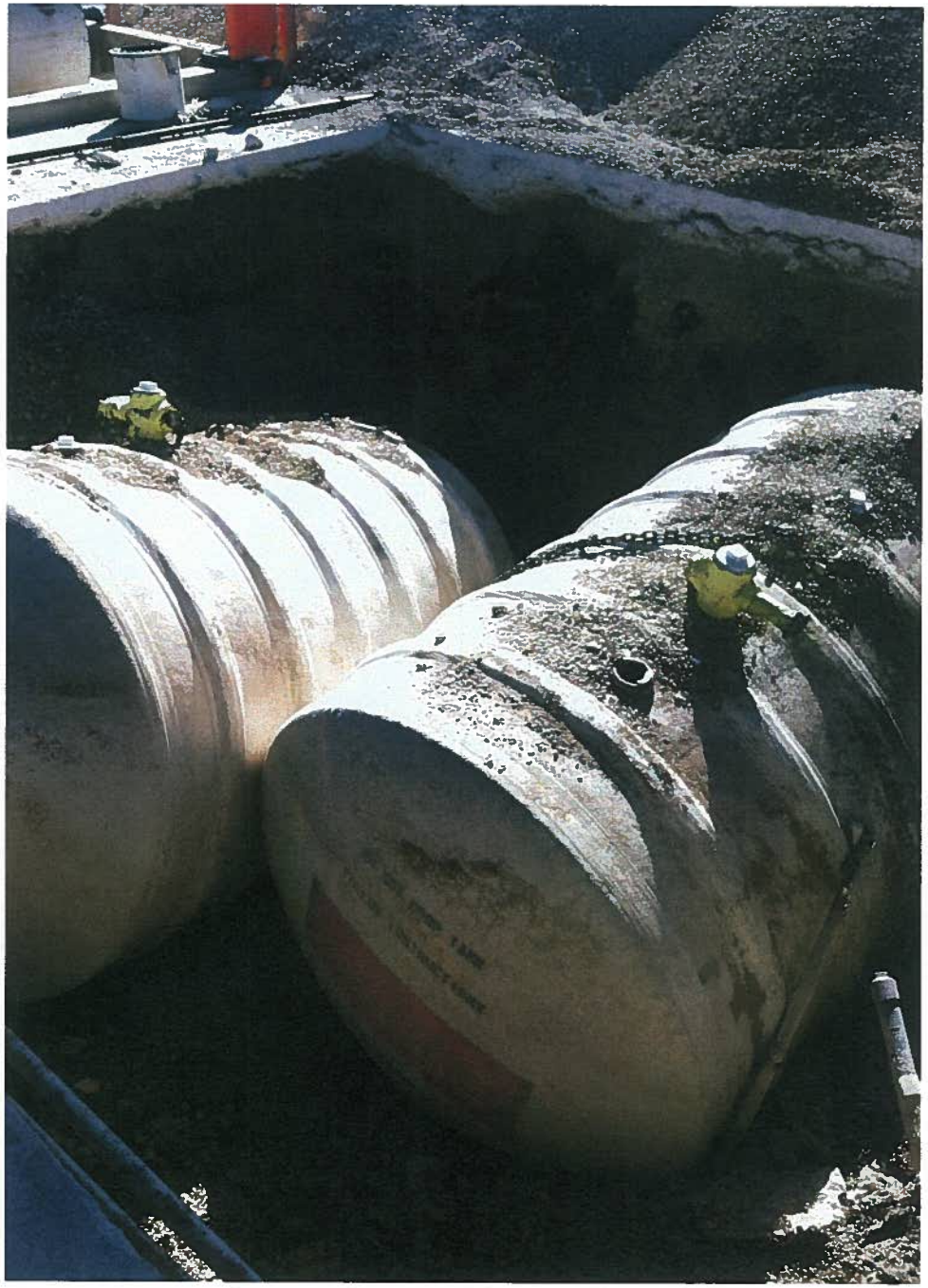
Sec. 23.902 HEIGHT REGULATIONS

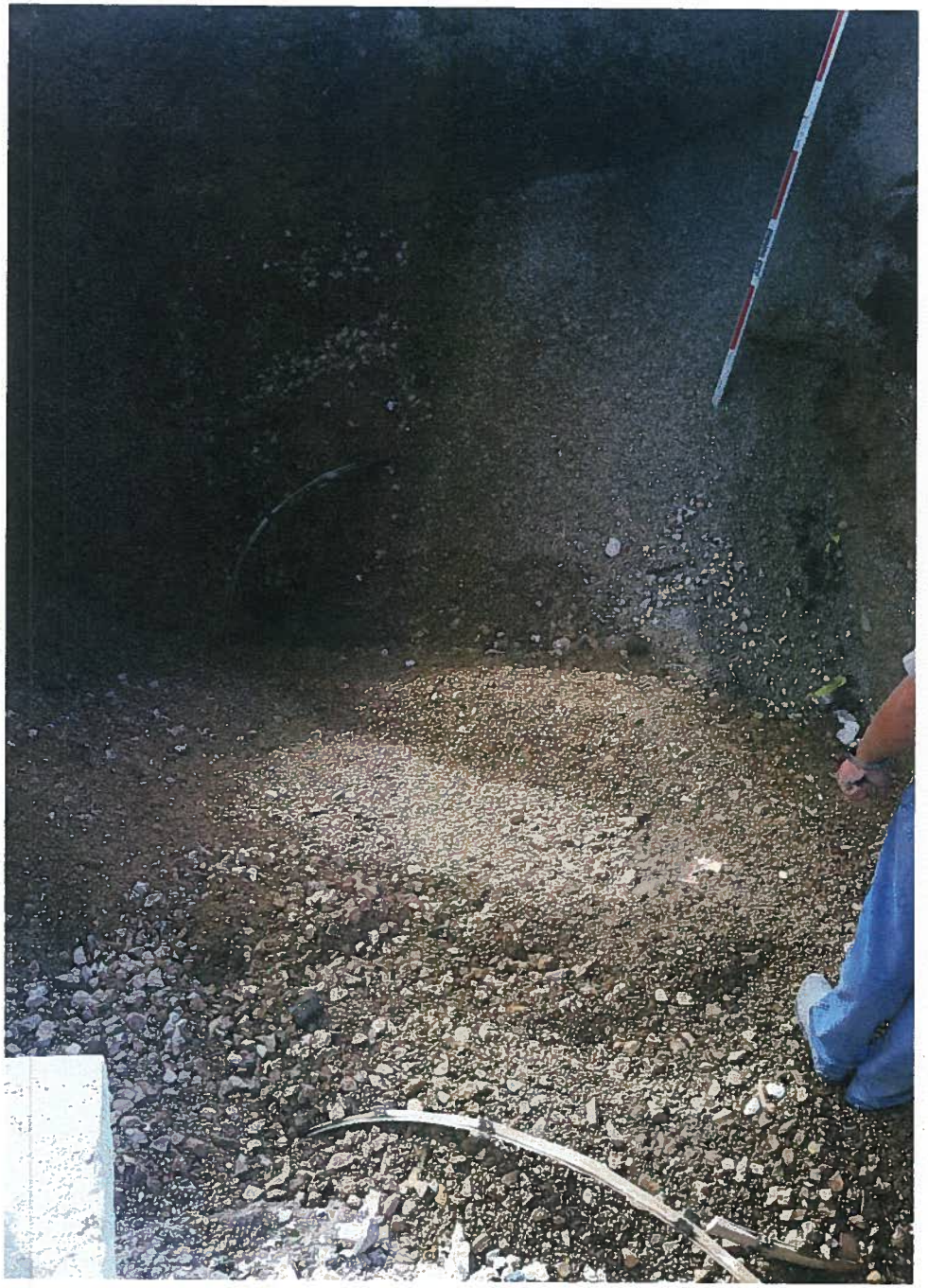
1. No building shall exceed two and one-half (2-1/2) stories or thirty-five feet (35') in height, except as provided in Section 23.1403 hereof. (Ord. No. 212, 11/14/88)

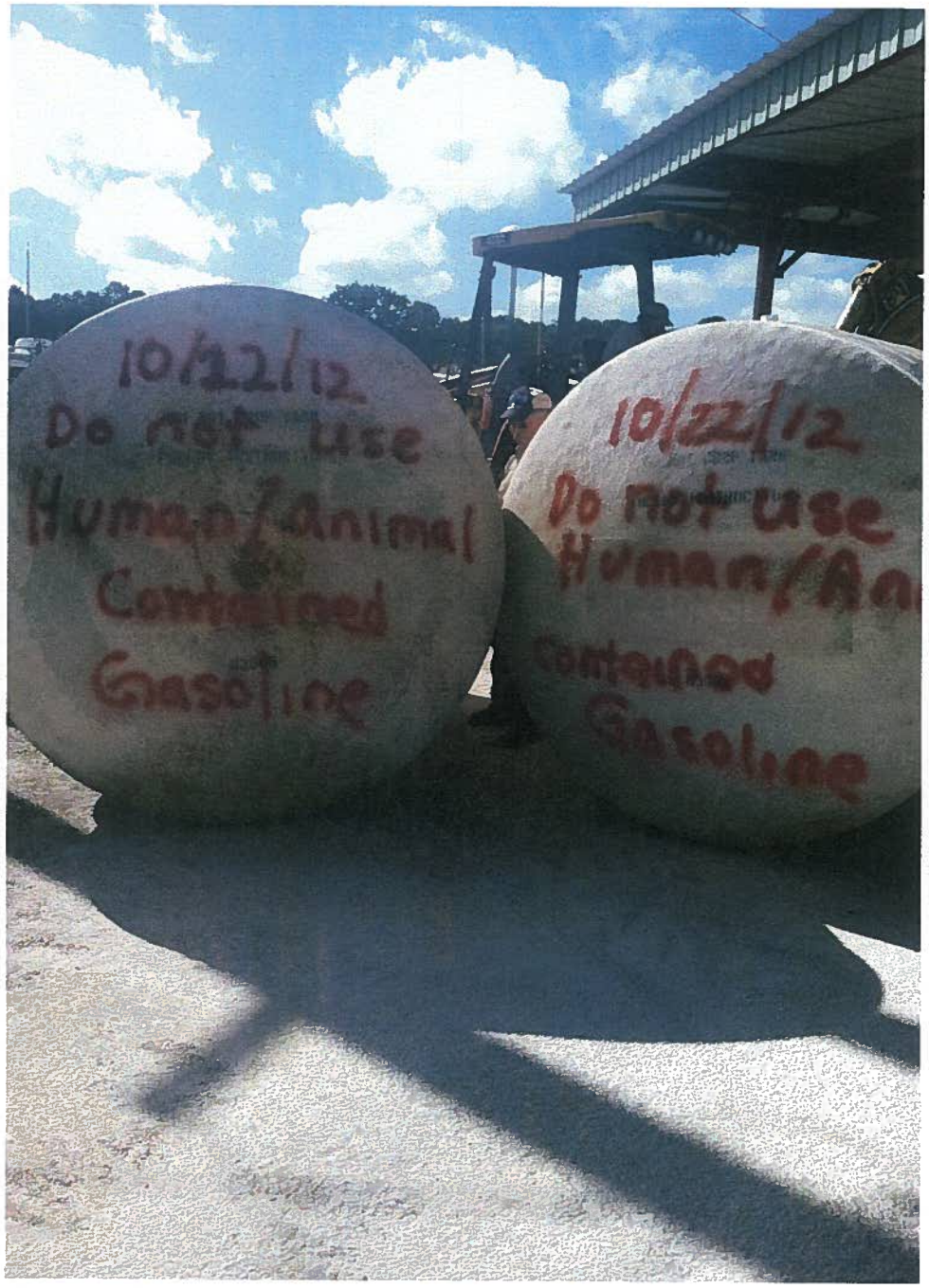
2. A ground installed Amateur Radio Antenna Tower shall not







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Do not use
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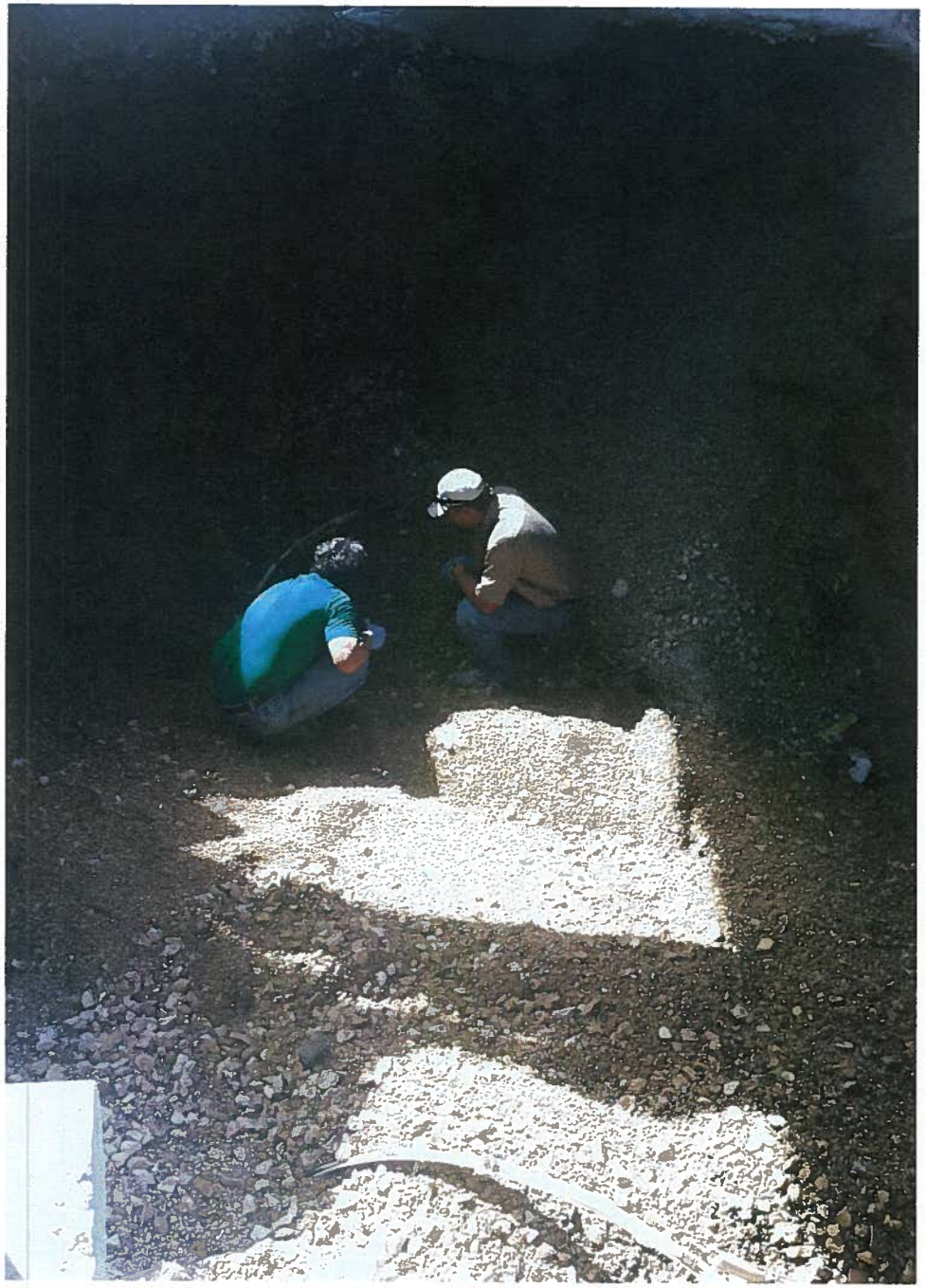

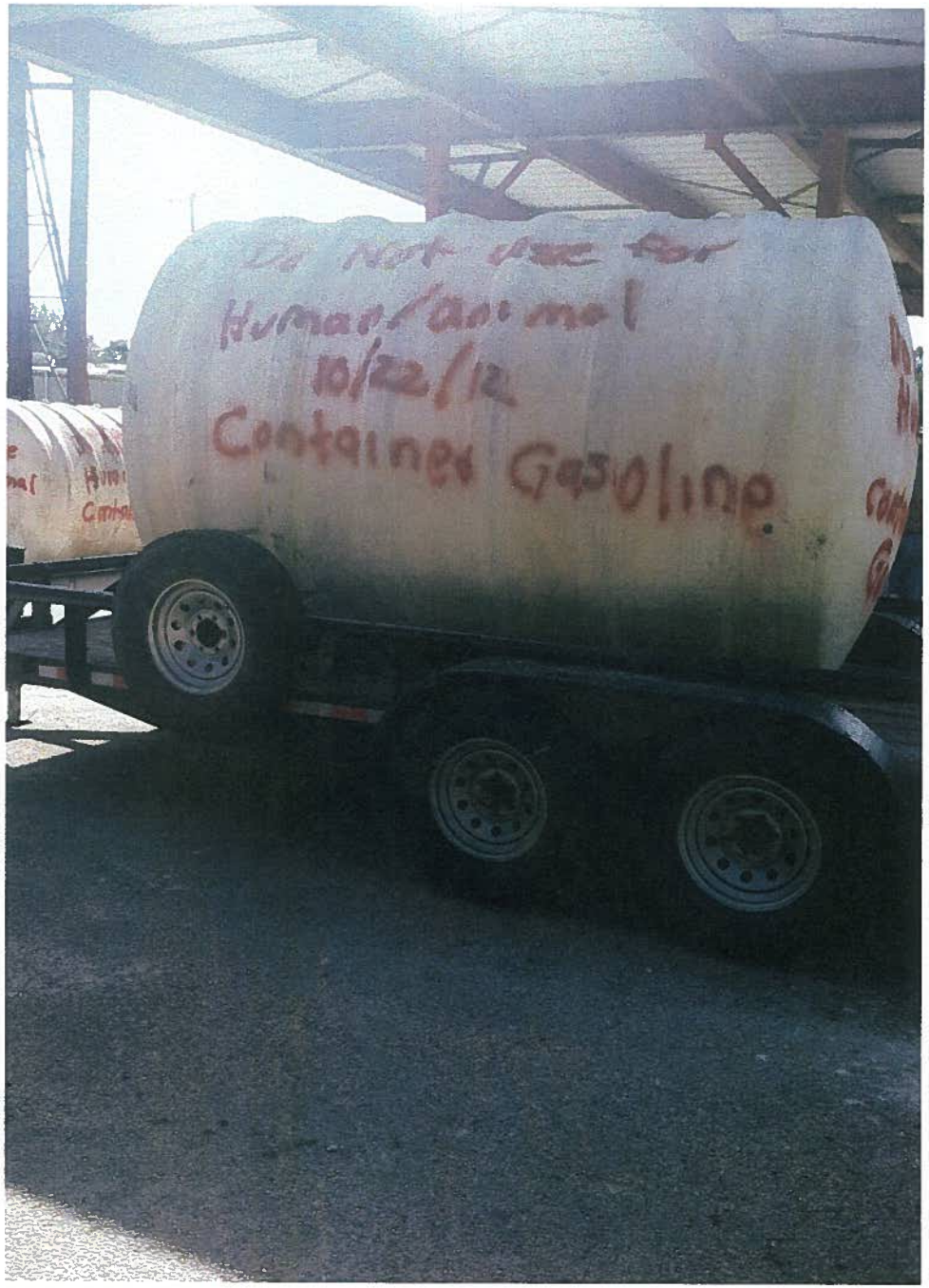
Do Not use for
Human/animal
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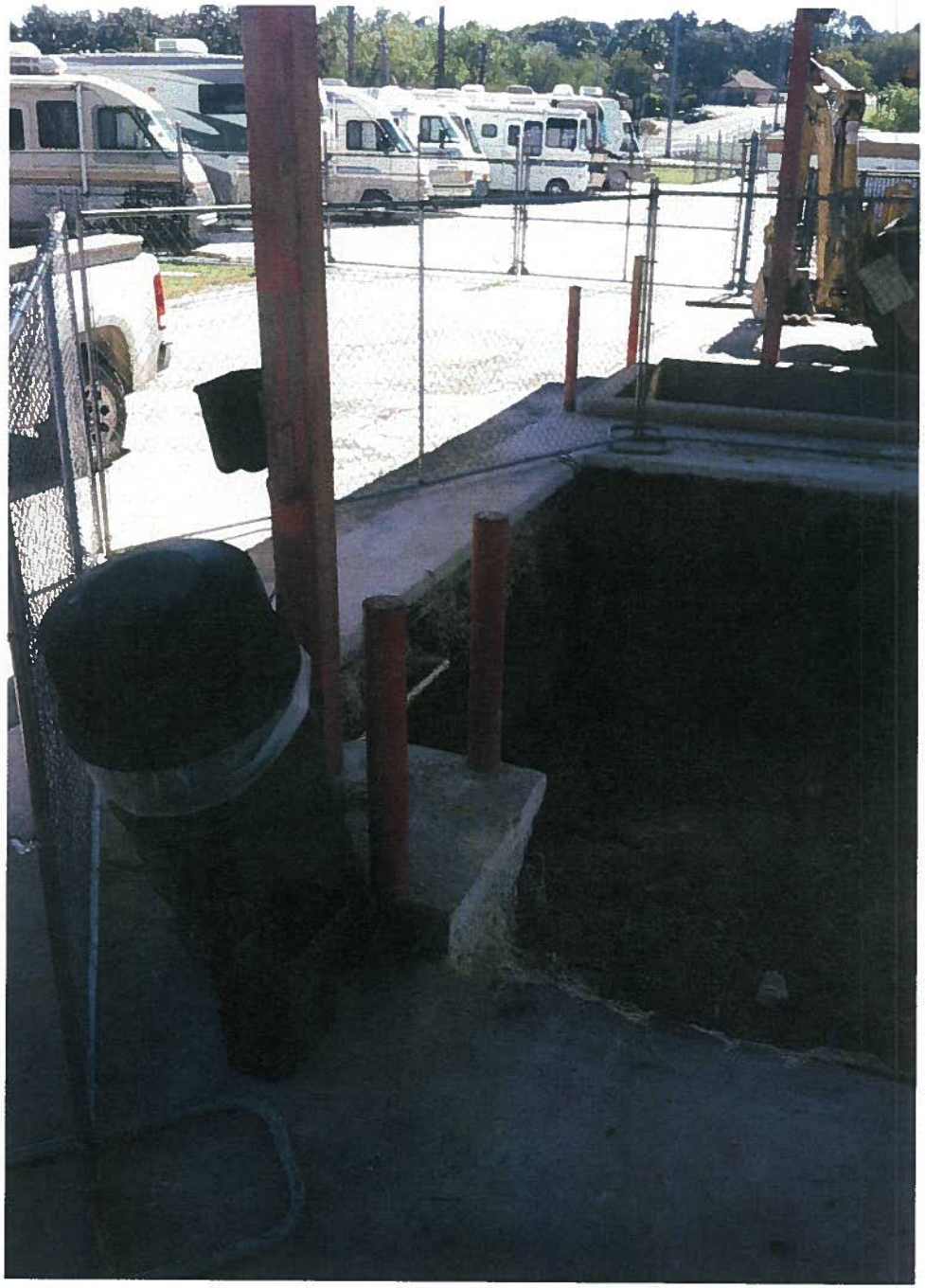
Container Gasoline



Summary of Prelimiary Options for Windcrest Ballpark Facilities at Takas Park

Options		Feature Addressed				Approximate Construction Cost	Professional Services Required	State TLDR Review Required	Brings Facility into Accessibility and Code Compliance
		Roofs	Restrooms	Concession	Storage				
A	Do Nothing	✗	✗	✗	✗	**$0**	No	No	No
B	Replace Roofs Only	●	✗	✗	✗	**$5,000 - $6,000**	No	No	No
C	Remodel Existing Restrooms for TAS Compliance Only	✗	○	✗	✗	**$15,000 - $20,000**	Yes	No	No
D	Enclose Breezeway for TAS Restroom and Additional Storage	✗	○	✗	○	**$15,000 - $20,000**	Yes	No	No
E	Demolition Existing and Construction of 1 New Bldg on Site	●	●	●	○	**$60,000 - $80,000**	Yes	Yes	(Need to Address Parking and Routes)
F	Construct Stand-Alone Restroom Bldg (Prefabricated)	✗	●	✗	○	**$30,000 - $40,000**	No	No	(Need to Address Parking and Routes)
G	Construct Stand-Alone Concession Bldg (Prefabricated)	✗	✗	●	○	**$15,000-$20,000**	No	No	(Need to Address Parking and Routes)
H	Construct Stand-Alone Combined Restroom /Concession Bldg (Prefabricated)	✗	●	●	○	**$80,000 - $120,000**	No	Yes	(Need to Address Parking and Routes)
I	Accessible Parking and Routes to Facility	✗	✗	✗	✗	**TBD**	Yes	Yes	Partially

Note: These options are based on a preliminary review of the needs, desires, and requirements of the City and the Parks and Recreation Commission. This summary is not intended to exclude any option, as additional options may become available with more information. The construction costs are approximate only and are not based on any engineering-related construction cost estimates.

✗	Not Addressed
○	Partially Addressed
●	Fully Addressed

Preliminary Procurement Options for Windcrest Ballpark Facility Modifications

I. Design – Bid – Build

a. Solicit for Design

I. Design-Bid-Build a. Solicit for Design - Typical Schedule								
TASK NAME	Approx. Cost	Approx. Duration	Nov	Dec	Jan	Feb	Mar	Apr
Design (incl. Procurement)	$15,000	2-3 months						
Construction Bid (incl. Procurement)	$5,000	1 month						
Construction	Varies	1-2 months						

b. Acquire Design through Existing Engineering IDIQ Contract

I. Design-Bid-Build b. Design Through IDIQ - Typical Schedule								
TASK NAME	Approx. Cost	Approx. Duration	Nov	Dec	Jan	Feb	Mar	Apr
Design (incl. Procurement)	$15,000	2-3 months						
Construction Bid (incl. Procurement)	$5,000	1 month						
Construction	Varies	1-2 months						

II. Design /Build

a. Solicit for Design/Build

II. Design/Build a. Solicit for Combined Design and Construction - Typical Schedule								
TASK NAME	Approx. Cost	Approx. Duration	Nov	Dec	Jan	Feb	Mar	Apr
Procurement RFQ, Select, RFP, Select	$15,000	3 months						
Construction	Varies	1-2 months						

III. Texas Multiple Award Selection (TxMAS)

a. Job Order Contractor
(Assumes design acquired through Existing Engineering IDIQ Contract)

III. TxMAS Contractors a. Job Order Contractor - Typical Schedule								
TASK NAME	Approx. Cost	Approx. Duration	Nov	Dec	Jan	Feb	Mar	Apr
Design	$12,000	1-2 months						
Construction	Varies	1-2 months						

b. Complete Pre-Fabricated Structure
(All engineering and architectural designs included in the structure price)

III. TxMAS Contractors b. Complete Pre-Fabricated Structure - Typical Schedule								
TASK NAME	Approx. Cost	Approx. Duration	Nov	Dec	Jan	Feb	Mar	Apr
Place Order	$0	60-90 days						
Construction, incl. Site Prep	Varies	1-2 weeks						

CITY OF WINDCREST EDC INTEROFFICE MEMORANDUM

TO: MAYOR ALAN BAXTER, EDC PRESIDENT TIM MALONEY, CITY MANAGER RAFAEL CASTILLO

FROM: ROBERT COLUNGA

SUBJECT: AGREEMENT REGARDING RECIPROCAL EASEMENTS, RESTRICTIONS, COVENANTS AND CONDITIONS AND MEMORANDUM OF PURCHASE OPTION

DATE: 8/29/2012

CC: EDC DIRECTO SHERRY MOSIER, EDC ATTORNEY HARRY ADAMS

OBSERVATIONS FROM READING AGREEMENT

Mayor and Mr. Maloney I was asked to read and review the agreements submitted by Rackspace concerning the easements at Rackspace and surrounding properties. I believe you all have copies of this agreement and if you do not I will provide. I feel there are several areas of concern that need to be addressed by our attorneys and Mr. Maloney and the Mayor as I do not believe they are in the WEDC or the Cities best interest. I will address the areas I believe we have issues in this agreement below. (See Attached page to refer to Agreement)

- 2.6 **Owner** Rackspace defines themselves as the owner of the property

- 2.12 **Rackspace Lease** This line definition counters 2.6 and notes that the WEDC is property owner or landord and Rackspace is tenant.

- 4.1 **Maintenance and Repair of the Access Roads** – Concern is that if we sign does this constitute a new agreement between the EDC and Rackspace as to us bearing full cost and repair or only basic cost.

- 4.2 **Maintenance and Repair of Access and Parking Easements** – Same issues as 4.1 we need to have language that protects the city and EDC and refers to our current understandings.

- 6.1 **Memorandum of Purchase Option** – This gives all the power to Rackspace to sell off the property with out any obligation to take over the property as it is currently set and gives NFP first option to purchase.

I believe this requires extensive review and consultation with our legal to ensure all interest of the WEDC and the City are protected.

Thank you,

Robert Colunga
Government Relations Business Development

2.6 **Owner**: The owner of any portion of the Property, its successor or assigns. For purposes hereof, Rackspace, as the ground lessee of the Rackspace Parcel under the Rackspace Lease shall be deemed the Owner of the Rackspace Parcel.

2.12 **Rackspace Lease**. That certain Ground Lease Agreement dated August 2, 2007, as amended from time to time, by and between Windcrest Economic Development Corporation, on behalf of the City of Windcrest, as landlord, and Rackspace, as tenant.

4.1 **Maintenance and Repair of the Access Roads**. The Owner of the Rackspace Parcel shall maintain and repair, at its sole cost and expense, the Access Roads, so as to keep improved portions of the Access Roads, as may exist from time-to-time, at all times in a safe, sightly, good and functional condition to the same standard as the driveways on the remainder of the Rackspace Parcel; provided, however, that (i) nothing contained herein shall be deemed to obligate the Owner of the Rackspace Parcel to construct any new improvements on the Rackspace Parcel and/or redevelop the Rackspace Parcel (or any portion thereof); and (ii) the Owner of the Rackspace Parcel may dedicate the Access Roads to the City of Windcrest or other applicable governmental entity as a publicly dedicated street, whereupon such maintenance and repair obligations shall be transferred to the appropriate governmental entity.

4.2 **Maintenance and Repair of Access and Parking Easements**. Each Owner shall maintain and repair (or cause its respective Occupant to maintain and repair) the portions of the Access and Parking Easements located on its respective Parcels, at its sole cost and expense, so as to keep improved portions of the same, as may exist from time-to-time, at all times in a safe, sightly, good and functional condition to the same standard as the driveways, parking areas, landscaping and

ARTICLE 6

Memorandum of Purchase Option

6.1 As of the date hereof, the parties have entered into an Option Agreement, pursuant to which Windcrest and Rackspace have granted to NFP an option to purchase Tract 2 (the "***Purchase Option***"), in strict accordance with the terms, provisions and conditions thereof. The Purchase Option Agreement contains numerous other provisions affecting the rights of the parties; the enumeration of the provisions set forth above is not intended to be inclusive of all provisions in the Purchase Option Agreement. This memorandum does not alter, amend or modify the Purchase Option Agreement, but is executed for the purpose of recording a memorandum thereof in the Real Property Records of Bexar County, Texas, to give notice to third parties of the Purchase Option granted in the Purchase Option Agreement, to which reference is here made for a full description of the rights of the parties. In the event of any conflict between the terms of the Purchase Option Agreement and this memorandum thereof, the Purchase Option Agreement shall control. Upon the termination or expiration of the Purchase Option, either party may request that the other execute a memorandum confirming the termination thereof and record the same in the real property records of Bexar County, Texas.

AGREEMENT REGARDING
RECIPROCAL EASEMENTS, RESTRICTIONS, COVENANTS AND CONDITIONS AND MEMORANDUM OF PURCHASE OPTION

This Agreement Regarding Reciprocal Easements, Restrictions, Covenants and Conditions and Memorandum of Purchase Option (this "**Agreement**") is made and entered into effective as of the ____ day of _____, 2012 (the "**Effective Date**"), by and between (i) RACKSPACE US, INC., a Delaware corporation ("**Rackspace**"), and (ii) James C. Niemann, Trustee for THE NFP PARTNERSHIP, a Texas general partnership ("**NFP**"); and consented to by WINDCREST ECONOMIC DEVELOPMENT CORPORATION ("**Windcrest**").

ARTICLE 1.

Recitals

1.1 **Rackspace Parcel**. Windcrest is the Owner of certain real property in the City of Windcrest, Bexar County, Texas, more particularly described on **Exhibit A** attached hereto (the "**Rackspace Parcel**") and Rackspace is the ground lessee thereof.

1.2 **NFP Parcels**. NFP is the Owner of certain real property in the City of Windcrest, Bexar County, Texas located to the northwest of the Rackspace Parcel, more particularly described on **Exhibit B** attached hereto (the "**Northwest Outparcel**"). NFP is also the Owner of certain real property in the City of Windcrest, Bexar County, Texas located to the south of the Rackspace Parcel, more particularly described on **Exhibit C** attached hereto (the "**South Parcel**")(the Northwest Outparcel and the South Parcel are collectively referred to herein as the "**NFP Parcels**"). NFP has the authority to enter into this Agreement as to the NFP Parcels, without the joinder of any other party, including without limitation, any Occupant, Permittee or mortgagee of the NFP Parcels (except for the specific consents attached hereto and made a part hereof for all purposes).

1.3 **Purpose**. The parties hereto desire to subject the Rackspace Parcel and the NFP Parcels to certain specifically defined easements, covenants, conditions and restrictions, pursuant to which the same shall be held, improved and conveyed.

NOW, THEREFORE, in consideration of the premises, the sum of Ten and No/100 Dollars ($10.00), and other good and valuable consideration in hand paid, and in consideration of the mutual agreements herein made, the receipt and sufficiency of which are hereby acknowledged, the undersigned hereby agree as follows:

ARTICLE 2.

Definitions

2.1 **Access Road 1**. That certain publicly dedicated road to be constructed on the Rackspace Parcel and known as "Windsor Drive", in the location depicted on the Site Plan as the "Access Road 1", as the same exist from time to time and as modified from time to time.

2.2 **Access Road 2**. That certain publicly dedicated road to be constructed on the Rackspace Parcel and known as "Fourwinds Drive, in the location depicted on the Site Plan as the "Access Road 2", as the same exist from time to time and as modified from time to time.

2.3 **Access Road 3**. That certain publicly dedicated road to be constructed on the Rackspace Parcel, in the location depicted on the Site Plan as the "Access Road 3", as the same exist from time to time and as modified from time to time.

2.4 **Completion Date**. The later of (i) the date of final completion of the Access Roads and parking reconfiguration work set forth in Section 3.2 below, as evidenced by a certificate of final completion from the engineers of the Owner of the Rackspace Parcel, and (ii) the date upon the Access Roads are dedicated to the public. Within sixty (60) days after the Completion Date, Windcrest and Rackspace shall cause to be prepared and recorded an amendment to this Agreement ("**Amendment**") attaching the final legal descriptions of Tract 1, Tract 2, Tract 3 and Tract 4 as **Exhibits E-1, E-2, E-3 and E-4** respectively.

2.5 **Occupant**: Any Person, from time to time, entitled to the use and occupancy of any portion of the Property under any lease, sublease, license, concession or other similar agreement.

2.6 **Owner**: The owner of any portion of the Property, its successor or assigns. For purposes hereof, Rackspace, as the ground lessee of the Rackspace Parcel under the Rackspace Lease shall be deemed the Owner of the Rackspace Parcel.

2.7 **Parcel**. Any of the Rackspace Parcel, the Northwest Outparcel, or the South Parcel.

2.8 **Party**. Each of Rackspace and NFP.

2.9 **Permittee**: All Owners, Occupants and the partners, officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees and licensees of Owners and Occupants.

2.10 **Person**: Individuals, partnerships, firms, associations, corporations, trusts, governmental agencies, administrative tribunals or any other form of business or legal entity.

2.11 **Property**. The Rackspace Parcel, the Northwest Outparcel, and the South Parcel, collectively.

2.12 **Rackspace Lease**. That certain Ground Lease Agreement dated August 2, 2007, as amended from time to time, by and between Windcrest Economic Development Corporation, on behalf of the City of Windcrest, as landlord, and Rackspace, as tenant.

2.13 **Site Plan**. That certain drawing of the Property attached hereto as **Exhibit D** and made a part hereof.

2.14 **Tract 1**. That certain portion of the Rackspace Parcel, in the location depicted on the Site Plan as "Tract 1", to be more particularly described in **Exhibit E-1** to be attached hereto and made a part hereof for all purposes in the Amendment.

2.15 **Tract 2**. That certain portion of the Rackspace Parcel, in the location depicted on the Site Plan as "Tract 2", to be more particularly described in **Exhibit E-2** to be attached hereto and made a part hereof for all purposes in the Amendment. The legal description to be contained in Exhibit E-2 shall also be deemed incorporated into the Option Agreement as set forth in **Article 6** below.

2.16 **Tract 3.** That certain portion of the Rackspace Parcel, in the location depicted on the Site Plan as "Tract 3", to be more particularly described in **Exhibit E-3** to be attached hereto and made a part hereof for all purposes in the Amendment.

2.17 **Tract 4.** That certain portion of the Rackspace Parcel, in the location depicted on the Site Plan as "Tract 4", to be more particularly described in **Exhibit E-4** to be attached hereto and made a part hereof for all purposes in the Amendment.

ARTICLE 3.

Easements

3.1 **Access Easements**. Rackspace, as the current Owner of Tract 1, Tract 2 and Tract 4, and NFP, as the current Owner of the Northwest Outparcel (and as the future owner of Tract 2 in the event it exercises its Purchaser Option as set forth in Article 6 below), do hereby dedicate and create the following easements, for the benefit of the Owner(s) of the Northwest Outparcel, Tract 1, Tract 2 and Tract 4 and their respective Occupants and Permittees, as applicable (collectively, the "**Access Easements**"):

(i) a non-exclusive access easement, appurtenant to the Northwest Outparcel, for ingress and egress by vehicular and pedestrian traffic to and from the Northwest Outparcel across Tract 2 to the curb cut connecting into Access Road 1, in approximately the location depicted on the Site Plan, as the same exists from time to time, subject to the requirements of applicable law and the terms, provisions and conditions hereof;

(ii) a non-exclusive access easement, appurtenant to the Northwest Outparcel, for ingress and egress by vehicular and pedestrian traffic to and from the Northwest Outparcel across Tract 2 to the curb cut connecting into Access Road 2, in approximately the location depicted on the Site Plan, as the same exists from time to time, subject to the requirements of applicable law and the terms, provisions and conditions hereof;

(iii) a non-exclusive access easement, appurtenant to Tract 2, for ingress and egress by vehicular and pedestrian traffic to and from Tract 2 across the Northwest Outparcel to the curb cut connecting into Walzem Road, in approximately the location depicted on the Site Plan, as the same exists from time to time, subject to the requirements of applicable law and the terms, provisions and conditions hereof;

(iv) a non-exclusive, perpetual access easement, appurtenant to Tract 1, for ingress and egress by vehicular and pedestrian traffic to and from Tract 1 across Tract 2 to the curb cut connecting into Access Road 2, in approximately the location depicted on the Site Plan, as the same exists from time to time, subject to the requirements of applicable law and the terms, provisions and conditions hereof;

(v) a non-exclusive, perpetual access easement, appurtenant to Tract 4, for ingress and egress by vehicular and pedestrian traffic to and from Tract 4 across Tract 2 to the curb cut connecting into Access Road 2, in approximately the location depicted on the Site Plan, as the same exists from time to time, subject to the requirements of applicable law and the terms, provisions and conditions hereof (the access easements described in clauses (iv) and (v) of this Section 3.1 being collectively referred to as the "**Permanent Access Easements**").

The parties acknowledge and agree that the locations of the foregoing Access Easements depicted on the Site Plan is approximate only; the parties may mutually agree to relocate one or more of such Access Easements to alternative locations along the common boundaries of their respective Parcel (provided, however, that reasonably similar alternative access is provided between the Parcels); whereupon the parties shall execute and record in the real property records of Bexar County, Texas, a memorandum specifying such alternative locations(s), as applicable.

In the event the Owner of the Northwest Outparcel elects to redevelop the Northwest Outparcel, as determined by the Owner of the Northwest Outparcel in its sole discretion, the Owner of the Northwest Outparcel shall have the right to unilaterally elect to terminate one or more of the Access Easements set forth in clauses (i), (ii) or (iii) of this Section 3.1 above by providing written notice of the same to the Owners of Tract 1, Tract 2 and Tract 4 (whereupon the Owner of the Northwest Parcel shall unilaterally execute and record in the real property records of Bexar County, Texas, a memorandum confirming the termination of the same).

Notwithstanding the foregoing or anything herein to the contrary the Owner of the Northwest Parcel shall have no right whatsoever to terminate the Permanent Access Easements set forth in clauses (iv) and (v) of this Section 3.1 above, which provided critical access for Tract 1 and Tract 4 to and from Access Road 2.

3.2 **Parking Easements**. Rackspace, as the current Owner of Tract 1, Tract 2 and Tract 4, and NFP as the current Owner of the Northwest Outparcel (and as the future owner of Tract 2 in the event it exercises its Purchaser Option as set forth in Article 6 below) do hereby create the following easements, for the benefit of the Owner(s) of the Northwest Outparcel, Tract 1, Tract 2 and Tract 4 and their respective Occupants and Permittees (collectively, the "**Parking Easements**"):

(i) a non-exclusive easement, appurtenant to the Northwest Outparcel, for parking, upon the parking area constructed from time-to-time on Tract 2, in common with the Owner of the Rackspace Parcel and its Occupants and Permittees, subject to the requirements of applicable law and the terms, provisions and conditions hereof; and

(ii) a non-exclusive easement, appurtenant to Tract 1 and Tract 4, for parking, upon the parking area constructed from time-to-time on Tract 2, in common with the Owner of the Rackspace Parcel and its Occupants and Permittees, subject to the requirements of applicable law and the terms, provisions and conditions hereof.

The parties acknowledge and agree that the Owner of the Rackspace Parcel intends to redevelop Tract 2 in accordance with **Exhibit F** attached hereto and made a part hereof for all purposes. The Owner of the Rackspace Parcel shall construct, or caused to be constructed, without any cost or expense to the Owner of the Northwest Outparcel, the following: (i) installing curbing in the locations depicted on Exhibit "F" and (ii) restriping the parking areas on Tract 2 in the configuration shown on **Exhibit F.**

Notwithstanding the creation of the foregoing Parking Easements and the rights of the Owner of the Rackspace Parcel to redevelop Tract 2 as set forth above, (i) the Owner of the Rackspace Parcel acknowledges and agrees that it shall not include the parking spaces on Tract 2 towards satisfying any required minimum parking ratios for Tract 1 and/or Tract 4 of any applicable governmental authority; and (ii) in the event the Owner of the Northwest Outparcel elects to redevelop the Northwest Outparcel, as determined by the Owner of the Northwest Outparcel in its sole discretion, the Owner of the Northwest Outparcel shall have the right to unilaterally elect to terminate one or more of the Parking Easements set forth in this Section 3.2 above by providing written notice of the same to the Owners of Tract 1 and Tract 4 (whereupon the parties shall execute and record in the real property records of Bexar County, Texas, a memorandum confirming the termination of the same).

3.3 **Truck Access Easement for South Parcel**. Rackspace, as the Owner of the Rackspace Parcel, does hereby GRANT, SELL and CONVEY unto the Owner of the South Parcel for the benefit of the Owner of the South Parcel and its respective Occupants and Permittees, a non-exclusive access easement, appurtenant to the South Parcel, for ingress and egress to and from the South Parcel by delivery trucks accessing the rear of any building located on the South Parcel to Access Road 3 across the portion of the Rackspace Parcel depicted on the Site Plan as "Service Road", as the same exists from time to time, subject to the requirements of applicable law and the terms, provisions and conditions hereof (the "**Truck Access Easement**"). The Owner of the South Parcel expressly acknowledges and agrees that (i) the Service Road is not open to the public and access thereto is limited by a controlled access gate, (ii) the foregoing easement does not grant to any party the right of ingress and egress for pedestrians or passenger vehicles, (iii) access to the Service Road is limited to delivery trucks actively involved in making deliveries to the rear of any buildings on the South Parcel for businesses located on the South Parcel.

The Access Easements, Parking Easements and Truck Access Easement are collectively referred to herein as the "Access and Parking Easements".

3.4 **Limitations on Access and Parking Easements**. Nothing contained in this Agreement shall be construed as granting to any Owner of the NFP Parcels and/or their respective Occupants and Permittees (i) any right to park upon the Rackspace Parcel or any other property, other than the Parking Easements described above, subject to the terms, provisions and conditions hereof; (ii) any right to access any other portion of the Rackspace Parcel or any other

property, other than the Access Easements described above, subject to the terms, provisions and conditions hereof; (iii) the right to construct buildings or any other improvements on the Access and Parking Easements, Rackspace Parcel or any other property. Moreover, the Access and Parking Easements granted above are limited to the specific portions of the Parcels described above and limited to the specific Owners, Occupants and Permittees described above and shall not in any manner be deemed as creating general reciprocal access between the Rackspace Parcel and the NFP Parcels.

3.5 **Permitted Exceptions**. The Access and Parking Easements described herein are conveyed and reserved subject to any and all other restrictions, easements, utility lines, or other matters or easements affecting the Property (collectively, the "Permitted Exceptions"). Any mortgage loans or deeds of trust now or hereafter obtained by either party secured in whole or in part by any portion of the Property shall be subordinate to this Agreement.

3.6 **Retention of Ownership**. Each Owner herein retains, reserves and shall continue to enjoy fee simple/leasehold ownership (as applicable), and the surface and subsurface, of its dominant, leasehold estate in its respective Parcel, including easement areas, for any and all purposes which do not unreasonably interfere with and prevent the use of the Access and Parking Easements, and for the benefit of itself, and its respective successors and assigns, the right to use the surface and subsurface of such portions of its Parcel, including easement areas, as may be necessary for the installation, operation, maintenance, repair, replacement, removal and relocation of underground storm sewer lines, sanitary sewer pipes, water and gas mains, electric power lines, telephone and cable T.V. lines, and other like uses which do not unreasonably interfere with and prevent the use of the Access and Parking Easements as contemplated herein.

ARTICLE 4.

Maintenance and Repair.

4.1 **Maintenance and Repair of the Access Roads**. The Owner of the Rackspace Parcel shall maintain and repair, at its sole cost and expense, the Access Roads, so as to keep improved portions of the Access Roads, as may exist from time-to-time, at all times in a safe, sightly, good and functional condition to the same standard as the driveways on the remainder of the Rackspace Parcel; provided, however, that (i) nothing contained herein shall be deemed to obligate the Owner of the Rackspace Parcel to construct any new improvements on the Rackspace Parcel and/or redevelop the Rackspace Parcel (or any portion thereof); and (ii) the Owner of the Rackspace Parcel may dedicate the Access Roads to the City of Windcrest or other applicable governmental entity as a publicly dedicated street, whereupon such maintenance and repair obligations shall be transferred to the appropriate governmental entity.

4.2 **Maintenance and Repair of Access and Parking Easements**. Each Owner shall maintain and repair (or cause its respective Occupant to maintain and repair) the portions of the Access and Parking Easements located on its respective Parcels, at its sole cost and expense, so as to keep improved portions of the same, as may exist from time-to-time, at all times in a safe, sightly, good and functional condition to the same standard as the driveways, parking areas, landscaping and

improvements on the remainder of the Rackspace Parcel, and (ii) insure the portions of the Access and Parking Easements located on its respective Parcels, in accordance with Article 7 below, and pay all ad valorem and other taxes applicable thereto (if and when the same are due).

ARTICLE 5

No Build Area

5.1. **No Build Area on Tract 3**. Rackspace hereby agrees that no permanent buildings or other commercial structures (including canopies, supports, loading docks, truck ramps, and other outward extensions of such structures) shall be constructed on Tract 3 (the "**No Build Area**"; provided, however, that the foregoing shall in no event be deemed to prohibit the construction and operation of parking areas, driveways, curbing, utilities, landscaping, and any other use that would not materially impair the visibility of the Northwest Outparcel from traffic traveling north on the portion of the publicly dedicated street to the southeast of Tract 3.

ARTICLE 6

Memorandum of Purchase Option

6.1 As of the date hereof, the parties have entered into an Option Agreement, pursuant to which Windcrest and Rackspace have granted to NFP an option to purchase Tract 2 (the "***Purchase Option***"), in strict accordance with the terms, provisions and conditions thereof. The Purchase Option Agreement contains numerous other provisions affecting the rights of the parties; the enumeration of the provisions set forth above is not intended to be inclusive of all provisions in the Purchase Option Agreement. This memorandum does not alter, amend or modify the Purchase Option Agreement, but is executed for the purpose of recording a memorandum thereof in the Real Property Records of Bexar County, Texas, to give notice to third parties of the Purchase Option granted in the Purchase Option Agreement, to which reference is here made for a full description of the rights of the parties. In the event of any conflict between the terms of the Purchase Option Agreement and this memorandum thereof, the Purchase Option Agreement shall control. Upon the termination or expiration of the Purchase Option, either party may request that the other execute a memorandum confirming the termination thereof and record the same in the real property records of Bexar County, Texas.

ARTICLE 7.

Insurance and Indemnity

7.1 **Insurance**. The Owner of the Northwest Outparcel and the Owner of the South Parcel shall maintain, or cause to be maintained, as to its respective Parcel and the portion of the Access and Parking Easements located thereon, public liability insurance insuring against claims on account of lost life, bodily injury or property damage that may arise from, or be occasioned by the condition, it use or occupancy of the Property and the Access and Parking Easements granted herein, or caused by such Owner, its Occupants, and the respective Permittees of such Owner and Occupant or caused by those persons for whose acts and omissions such Owner, its Occupants, and

their respective Permittees are legally liable. Each Owner of the Northwest Outparcel and the Owner of the South Parcel shall obtain insurance policies, according to the provisions hereof, covering the Property and the Access and Parking Easements granted herein from a reputable insurance company or companies qualified to do business in the State of Texas; and each such policy of insurance shall have limits of not less than $1,000,000.00 for each occurrence. Such insurance may be carried under a "blanket" policy or "blanket" policies covering other properties of each respective party, and may be subject to such self-insured retentions as a Party may desire. Each Owner of the Northwest Outparcel and the Owner of the South Parcel shall, upon written request from the Owner of the Rackspace Parcel, furnish to the Owner of the Rackspace Parcel one or more certificates of insurance evidencing the existence of the insurance required above.

ARTICLE 8.

Remedies

8.1 **Self Help and Other Remedies**. If any Party defaults in the performance of its obligations hereunder and the default is not cured within thirty (30) days following delivery of written notice to such defaulting party then the non-defaulting Party shall have the right to (i) perform such obligation on behalf of the defaulting Party, in which event such defaulting Party shall reimburse such non-defaulting party for all amounts expended by the non-defaulting party on behalf of the defaulting Party, together with interest thereon at the lesser of twelve percent (12%) per annum, or the maximum amount permitted by law from the date the amounts are expended until the date repaid; and/or (ii) exercise any other rights or remedies available to the non-defaulting Party either at law or in equity.

8.2 **Injunctive Relief**. In the event of a breach by any party hereto of any obligation of such party under this Agreement, the non-defaulting Party shall be entitled to injunctive relief mandating compliance herewith, and shall be entitled to obtain a decree specifically enforcing the performance of the obligations created hereunder. The undersigned hereby acknowledge and stipulate the inadequacy of legal remedies and irreparable harm which would be caused by the breach of this Agreement, and such non-defaulting party shall be entitled to relief by any and all other available legal and equitable remedies from the consequences of such breach. Any costs and expenses of any such proceeding, including reasonable attorney's fees, shall be paid by the defaulting party.

8.3 **Non-Waiver**. No delay or omission of any party hereto in the exercise of any rights created hereunder shall impair such right, or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of an event of default hereunder. A waiver by any party hereto of a breach of, or default in, any of the terms and conditions of this Agreement by the other party shall not be construed to be a waiver of any subsequent breach thereof or of any other provision of this Agreement. Except as otherwise specifically provided in this Agreement, no remedy provided in this Agreement shall be exclusive, but instead all remedies shall be cumulative with all other remedies provided for in this Agreement and all other remedies at law or in equity which are available to the parties hereto.

ARTICLE 9.

Notices

9.1 **Notices**. All notices, demands, statements, and requests (collectively the "Notice") required or permitted to be given under this Agreement must be in writing and shall be deemed to have been properly given or served as of the date hereinafter specified: (i) on the date of personal service upon the Party to whom the notice is addressed or if such Party is not available the date such notice is left at the address of the Party to whom it is directed, (ii) on the date the notice is postmarked by the United States Post Office, provided it is sent prepaid, registered or certified mail, return receipt request, and (iii) on the date the notice is delivered by a courier services (including Federal Express, Express Mail, Lone Star or similar operation) to the address of the Party to whom it is directed, provided it is sent prepaid, return receipt requested. The address of the signatories to this Agreement is set forth below:

If to Rackspace:	Rackspace Hosting Attn: General Counsel 5000 Walzem San Antonio, Texas 78218 Telephone No.: 210-312-4700 Fax No.: 210-312-4848
With a copy to:	Steve Golden Golden Steves Cohen and Gordon LLP 300 Convent Street, Suite 2600 San Antonio, Texas 78205 Telephone No.: (210) 745 3700 Fax No.: (210) 745 3737
If to NFP:	James C. Niemann, Trustee 1122 Colorado Street, Suite 313 Austin, Texas 78701 Attn: Fred Niemann, Jr. Telephone No.: (512) 474 6901 Email: fred.niemann@gmail.com
If to Windcrest:	Ray Watson Director of Economic Development 8601 Midcrown Windcrest, Texas 78239 Telephone No.: Fax No.: 210-655-8776

ARTICLE 10.

General Provisions

10.1 **Binding Effect**. The Parties hereby agree that (i) the terms, provisions and conditions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective Permittees, as well as the successors and assigns of such Persons; and (ii) the easements and restrictive covenants shall be appurtenant to and for the benefit of all the Owners and their successors and assigns and shall run with the land for the time periods set forth herein. This Agreement shall be construed in accordance with the laws of the State of Texas and all obligations hereunder are performable in Bexar County, Texas. This Agreement and the rights, obligations and duties hereunder shall be fully assignable by Rackspace to any assignee or sublessee under the Rackspace Lease.

10.2 **Partial Invalidity**. If any term, covenant or condition of this Agreement or the application of it to any Person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant or condition to Persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and shall be enforced to the extent permitted by law.

10.3 **Captions**. The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants or conditions contained herein.

10.4 **Gender**. In construing the provisions of this Agreement and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

10.5 **Relationship of the Parties**. Nothing contained herein shall be construed to make the parties hereto partners or joint venturers, or render any of such parties liable for the debts or obligations of the other party hereto.

10.6 **Amendment**. This Agreement may be canceled, changed, modified or amended in whole or in part only by the written and recorded agreement of Parties hereto, or their respective successors and assigns. In no event shall any amendment of this Agreement ever require the consent or joinder of any one or more of the agents, patrons, customers, employees, licensees or invitees of the Property.

10.7 **Term**. This Agreement and the easements, rights, obligations and liabilities created hereby shall encumber the Property for a period of fifty (50) years, or such lesser period if and to the extent a lesser period is required by applicable law, and thereafter the terms hereof shall be renewed automatically for successive ten (10) year periods unless all Owners and any parties owning at that time any security interest in any of the Parcels execute and record in the Bexar County, Texas, real estate records at any time a statement terminating this Agreement;

except as otherwise provided in Section 3.1 and 3.2 as to the earlier termination of some of the Access and Parking Easements.

10.8 **No Dedication**. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property to the general public or for the general public or for any public purpose whatsoever, it being the intention that this Agreement shall be strictly limited to and for the purposes herein expressed. This Agreement is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not specifically benefited by the terms and provisions hereof, nor are any easement rights granted to a party hereunder assignable to any third party.

Notwithstanding the foregoing, nothing contained in this Agreement shall prohibit the Owner of the Rackspace Parcel, its successors or assigns from dedicating or transferring, as applicable, all or any part of the easement areas on the Rackspace Parcel, including, without limitation, the Access Roads, to (i) an appropriate governmental entity, the effect of which would create a public street on the easement areas so dedicated, with maintenance and repair responsibilities transferring to the appropriate governmental entity, or (ii) a property owner's association, with maintenance and repair responsibilities transferring to the property owner's association.

10.9 **Counterparts**. This Agreement may be executed in any number of counterparts and each such counterpart hereof shall be deemed to be an original instrument, but all of such counterparts shall constitute but one Agreement.

10.10 **Attorneys Fees**. In the event any legal action or proceeding for the enforcement of any right or obligations herein contained is commenced, the prevailing party in such action or proceeding shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

[Separate Signature Pages Follow]

EXECUTED effective as of the Effective Date.

RACKSPACE US, INC.
a Delaware corporation

By: _____
Name: _____
Title: _____

THE STATE OF _____ §
§
COUNTY OF _____ §

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, the _____ of Rackspace US, Inc., a Delaware corporation, on behalf of said corporation.

_____
Notary Public in and for
The State of _____

[Signature Pages Continue]

James C. Niemann, Trustee for
The NFP Partnership,
a Texas general partnership

By: _____
Name: James C. Niemann
Title: Trustee

STATE OF TEXAS §
§
COUNTY OF _____ §

This instrument was acknowledged before me the ___ day of _____, 2012, by James C. Niemann, Trustee for The NFP Partnership, a Texas general partnership, on behalf of said limited partnership.

_____
Notary Public, in and for
The State of Texas

After recording return to:

Smita Bhakta
Golden Steves Cohen & Gordon LLP
300 Convent Street, Suite 2600
San Antonio, Texas 78205

Joinder of Windcrest

Windcrest Economic Development Corporation ("**Windcrest**") is the fee simple owner of the Rackspace Parcel, which is leased by Windcrest to Rackspace pursuant to that certain Ground Lease Agreement dated August 2, 2007, as amended from time to time. Windcrest joins in the execution of this Agreement as the current fee simple owner of the Rackspace Parcel for the purpose of subjecting the Rackspace Parcel to the terms, provisions and conditions of this Agreement.

WINDCREST:

WINDCREST ECONOMIC DEVELOPMENT CORPORATION

By: _____
Name: _____
Title: _____

THE STATE OF _____ §
§
COUNTY OF _____ §

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, the _____ of Windcrest Economic Development Corporation, on behalf of said corporation.

_____
Notary Public in and for
THE STATE OF _____

EXHIBIT A

BEGINNING at a 3/4" iron rod found in the east line of Interstate Highway (IH) 35/ Loop 410 (R.O.W. Varies), also being the southwest corner of said Lot 44, and being the northwest corner of Lot 36, of the Replat of Toys "R" Us Subdivision, recorded in Volume 9520, Page 187, (D.P.R.B.C.T.), for the southwest corner and POINT OF BEGINNING hereof, from which a 4" Texas Department of Transportation (TXDOT) brass disk monument found in the east line of said IH 35/ Loop 410 at station 1882+00 and offset right 213.20', bears S09°56'18"W, a distance of 454.36 feet;

THENCE, with the east line of said IH 35/ Loop 410, same being the west line of said Lot 44, N09°56'18"E, a distance of 437.50 feet to 1/2-inch iron rod found for an angle point hereof, same being the southwest corner of Lot 45 of said Replat Establishing Simon Apple Garden;

THENCE, leaving the east line of said IH 35/ Loop 410, same being the west line of said Lot 44, with the common line between said Lots 44 and 45, the following five (5) courses and distances:

1) S80°21'18"E, a distance of 217.15 feet to a PK nail found for an angle point hereof, same being the southeast corner of said Lot 45, and a southeast corner of said Lot 44;
2) N10°05'00"E, a distance of 147.36 feet to a 1/2-inch iron rod found for an angle point hereof, same being a northeast corner for said Lot 45, also being an angle point for said Lot 44;
3) N80°16'37"W, a distance of 22.47 feet to a 1/2-inch iron rod found for an angle point hereof, same being an angle point for said Lots 44 and 45;
4) N09°43'58"E, a distance of 9.05 feet to a 1/2-inch iron rod found for an angle point hereof, same being a northeast corner for said Lot 45, also being an angle point for said Lot 44;
5) N80°08'26"W, a distance of 195.02 feet to a 1/2-inch iron rod found for an angle point hereof, same being the northwest corner of said Lot 45, also being an angle point of said Lot 44, same being a point in the east line of said IH 35/ Loop 410;

THENCE, with the east line of said IH 35/ Loop 410, same being the west line of said Lot 44, N09°56'18"E, a distance of 64.23 feet to a 1/2-inch iron rod with "Vickery" cap found for an angle point hereof, same being the southwest corner of Lot 46 of said Replat Establishing Simon Apple Garden, also being an angle point for said Lot 44;

THENCE, leaving the east line of said IH35/ Loop 410, same being the west line of said Lot 44, with the common line between said Lots 44 and 46, S80°07'28"E, a distance of 225.13 feet to a 1/2-inch iron found for an angle point hereof, same being the southeast corner of said Lot 46, also being an angle point for said Lot 44;

THENCE, continuing with the common line between said Lots 44 and 46, N09°56'34"E, a distance of 230.05 feet a 1/2-inch iron rod found for an angle point hereof, same being the northeast corner of said Lot 46, same being an angle point for said Lot 44;

THENCE, crossing through said Lot 24, S80°02'51"E, a distance of 37.96 feet to a PK nail found for an angle point hereof, same being an angle point for said 11.5384 acre tract, also being an angle point for said Lot 44;

THENCE, continuing through said Lot 24, with a north line of said 11.5384 acre tract, N89°45'32"E, a distance of 103.11 feet to a PK nail found for an angle point hereof, same being an angle point of said 11.5384 acre tract, said point lies within said Lot 24;

THENCE, continuing through said Lot 24, with a west line of said 11.5384 acre tract, N00°36'38"E, a distance of 327.41 feet to a PK nail found for an angle point hereof, same being an angle point of said 11.5384 acre tract, said point lies within said Lot 24;

THENCE, continuing through said Lot 24, with a south line of said 11.5384 acre tract, N80°48'25"W, a distance of 311.55 feet to a PK nail found for an angle point hereof, same being an angle point of said 11.5384 acre tract, and being a point in the west line of said Lot 24, also being a point in the east line of said IH35/ Loop 410;

THENCE, with the west line of said Lot 24, same being the east line of said IH 35/ Loop 410, N09°56'18"E, a distance of 54.60 feet to a 1/2-inch iron rod with "Doucet & Assoc," cap set for a northwest corner hereof, same being a northwest corner of said Lot 24, and the southwest corner of Lot 22 of the Simon Subdivision recorded in Volume 7300, Page 69, (D.P.R.B.C.T.);

THENCE, with the south line of said Lot 22, and the north line of said Lot 24, N85°26'50"E, a distance of 381.62 feet to a PK nail with "Brown" shiner found for a point of curvature (P.C.) hereof, same being a P.C. for said Lot 22, also being a northwest corner and P.C. of said Lot 25;

THENCE, continuing with the southeast line of said Lot 22, and with the northwest line of said Lot 25, along a curve to the left, whose radius is 159.75 feet, whose delta is 85°23'33", at an arc length of 238.09 feet, and overall chord which bears N42°47'06"E, a distance 216.66 feet to a 1/2-inch iron rod with

"Vickery" aluminum cap found for a point of tangency (P.T.) hereof, same being a P.T. for said Lots 22 and 25;

THENCE, continuing with the west line of said Lot 22, and the east line of said Lot 25, N00°05'45"E, a distance of 249.80 to a 1/2-inch iron rod with "Vickery" cap found for a northwest corner hereof, same being a northwest corner of said Lot 25, and a northeast corner of said Lot 22, same being a point in the south line of Walzem Road/ Farm to Market (FM) 1976 (R.O.W. Varies);

THENCE, with the south line of said Walzem Road/ FM 1976, and the north line of said Lot 25, N89°47'19"E, a distance of 112.39 feet to a Mag nail with "Brown" shiner found for an angle point hereof, same being an angle point for said Lot 25, also being an angle point for said Walzem Road/ FM 1976, from which a 4" Texas Department of Transportation (TXDOT) brass disk monument found bears, S76°06'59"W, a distance of 1.29 feet;

THENCE, continuing with the south line of said Walzem Road/ FM 1976, and the north line of said Lot 25, S88°27'18"E, a distance of 120.88 feet to a Mag nail with "Doucet" washer set for an angle point hereof;

THENCE, leaving the south line of said Walzem Road/ FM 1976, same being the north line of said Lot 25, passing through said Lot 25 the next four (4) courses and distances:

1) S00°17'20"E, distance of 268.51 feet to a Mag nail with "Doucet" washer set for an angle point hereof;
2) Along a curve to the right, whose radius is 921.48 feet, whose delta is 01°33'47"", whose arc length is 25.14 feet, and whose chord bears N77°14'29"E, a distance of 25.14 feet to a Mag nail with "Doucet" washer set for a point of reverse curvature (P.R.C.) hereof;

3) Along a curve to the left, whose radius is 750.00 feet, whose delta is 09°26'18", whose arc length is 123.55 feet, and whose chord bears N73°18'14"E, a distance of 123.41 feet to a Mag nail with "Doucet" washer set for a point of compound curvature (P.C.C.) hereof;
4) Along a curve to the left, whose radius is 2010.40 feet, whose delta is 03°54'26", whose arc length is 137.10' feet, and whose chord bears N66°37'52"E, a distance of 137.07 feet to a Mag nail with "Doucet" washer set for a point of compound curvature (P.C.C.) hereof;

THENCE, continuing through said Lot 25, and in part through said Lot 44, along a curve to the left, whose radius is 500.00 feet, whose delta is 10°19'44", at an arc length of 14.77 feet passing the common line between said Lots 25 and 44, for an overall arc length of 90.14 feet, and whose overall chord bears N59°30'47"E, a distance of 90.02 feet to a Mag nail with "Doucet" washer set for a P.R.C. hereof, said point lies within said Lot 44;

THENCE, continuing in part through said Lot 44, and through said Lot 38, along a curve to the right, whose radius is 500.00 feet, whose delta is 11°52'41", at an arc length of 3.44 feet passing the common line between said Lots 44 and 38, for an overall arc length of 103.66 feet, and whose overall chord bears N60°17'16"E, a distance of 103.47 feet to a Mag nail with "Doucet" washer set for a P.T. hereof, said point lies in said Lot 38;

THENCE, continuing through said Lot 38, N16°51'51"W, a distance of 69.10 feet to a PK nail with "Brown" shiner found for an angle point hereof, same being a point in the south line of said Walzem Road/ FM 1976, also being the northern most northwest corner of said Lot 38, and the northeast corner of said Lot 44;

THENCE, with the south line of said Walzem Road/ FM 1976, same being the north line of said Lot 38, N89°44'36"E, a distance of 592.04 feet to a 1/2-inch iron rod with "Vickery" aluminum cap found for an angle point hereof, same being an angle point in the south line of said Walzem Road/ FM 1976, and an angle point in the north line of said Lot 38;

THENCE, continuing with the south line of said Walzem Road/ FM 1976, same being the north line of said Lot 38, N88°28'52"E, a distance of 17.99 feet to a "X" cut in concrete for the northern most northeast corner hereof, same being the northern most northeast corner of said Lot 38, also being the northwest corner of Lot 39 of said Replat of Subdivision Plat of Simon Subdivision;

THENCE, leaving the south line of said Walzem Road/ FM 1976, with the common line between said Lots 38 and 39 the following four (4) courses and distances:

1) S00°16'05"E, a distance of 151.24 feet to a 1/2-inch iron rod with "Vickery" aluminum cap found for an angle point hereof, same being the southwest corner of said Lot 39, and an angle point for said Lot 38;
2) N89°45'07"E, a distance of 131.79 feet to a 1/2-inch iron rod found for an angle point hereof, same being a southeast corner of said Lot 39, also being an angle point for said Lot 38;
3) N00°14'38"W, a distance of 18.06 feet to a 1/2-inch iron rod with "Vickery" cap found for an angle point hereof, same being an angle point for said Lots 38 and 39;

4) N89°37'31"E, a distance of 27.57 feet to a PK nail found for the eastern most northeast corner hereof, same being the eastern most southeast corner for said Lot 39, and the eastern most northeast corner of said Lot 38, also being a point in the west line of Lot 2, Block 1 of the Replat and Subdivision Plat Establishing Roosevelt High School Subdivision recorded in Volume 9566, Page 132, (D.P.R.B.C.T.);

THENCE, in part with the east line of Lot 38 and in part with the east line of Lot 37, both of said Replat of Simon Subdivision, and with the west line of Lot 2 of said Roosevelt High School, S00°13'42"E, at a distance of 685.73 feet passing the northeast corner of Lot 37, and being the southeast corner of Lot 38, for a total distance of 1379.71 feet to a PK Nail with "Brown" washer found for an interior ell corner hereof, said point is also an interior ell corner of said Lot 37, and being the southwest corner of said Lot 2;

THENCE, with a north line of said Lot 37, and in part with the south line of said Lot 2, N89°35'15"E, a distance of 63.93 feet to a PK with Shiner found for an exterior ell corner hereof, said point is also an exterior ell corner of said Lot 37;

THENCE, in part with an east line of said Lot 37, and in part with an east line of Lot 44 of said Replat Establishing Simon Apple Garden, S00°31'25"E, a distance of 145.30 feet to a 1/2" iron rod found for a southeast corner hereof, said point is also a southeast corner of said Lot 44 and being the northwest corner of Lot 12, Block 10 of Camelot Subdivision Unit 7, recorded in Volume 6500, Page 144 (D.P.R.B.C.T.), and being a point in the east line of a 40' City Public Service Board Easement as shown on said plat,

THENCE, with the south line of said Lot 44, and the north line of said 40' City Service Board Easement, S89°43'01"W, a distance of 39.73 feet to a 1/2" iron rod found for an interior ell corner hereof, said point is also a point on the west line of said 40' City Public Service Board Easement, and being an interior ell corner of said Lot 44;

THENCE, with the west line of said 40' City Public Service Board Easement, and a west line of said Lot 44, S00°56'32"W, a distance of 15.88 feet to a 1/2" iron rod found for an exterior ell corner hereof, said point is also an exterior ell corner of said Lot 44, and being the northeast corner of Lot 13 of said Camelot Subdivision;

THENCE, in part with the north line of Lots 13-26, Block "D" of said Camelot Subdivision, and in part with the north line of Lot 9, Block "B", of Camelot Subdivision Unit 5A, recorded in Volume 6500, Page 16 (D.P.R.B.C.T.), and in part with the north line of Lot 49 of Windsor Square Wal-Mart III recorded in Volume 9560, Page 80 (D.P.R.B.C.T.), and in part with the north line of Lot 36 of said Toys "R" Us, S89°31'43"W, a distance of 2200.44 feet to the POINT OF BEGINNING and containing 66.9915 Acre (2,918,150 sq. ft.) of land, more or less.

Exhibit B
Northwest Outparcel

That certain property comprising all of Lot 23, of the Walzem Road Subdivision, being more particularly described on the map or plat thereof recorded in Volume 7100, Page 12 of the Deed and Plat Records of Bexar County, Texas.

TOGETHER WITH:

That certain property comprising all of Lot 30, N.C.B. 12190, Simon Subdivision, being more particularly described on the map or plat thereof recorded in Volume 7800, Page 187 of the Deed and Plat Records of Bexar County, Texas.

Exhibit C
South Parcel

That certain property comprising all of Lot 36, of the Replat of Toys R' Us Subdivision, being more particularly described on the map or plat thereof recorded in Volume 9520, Page 187 of the Deed and Plat Records of Bexar County, Texas.

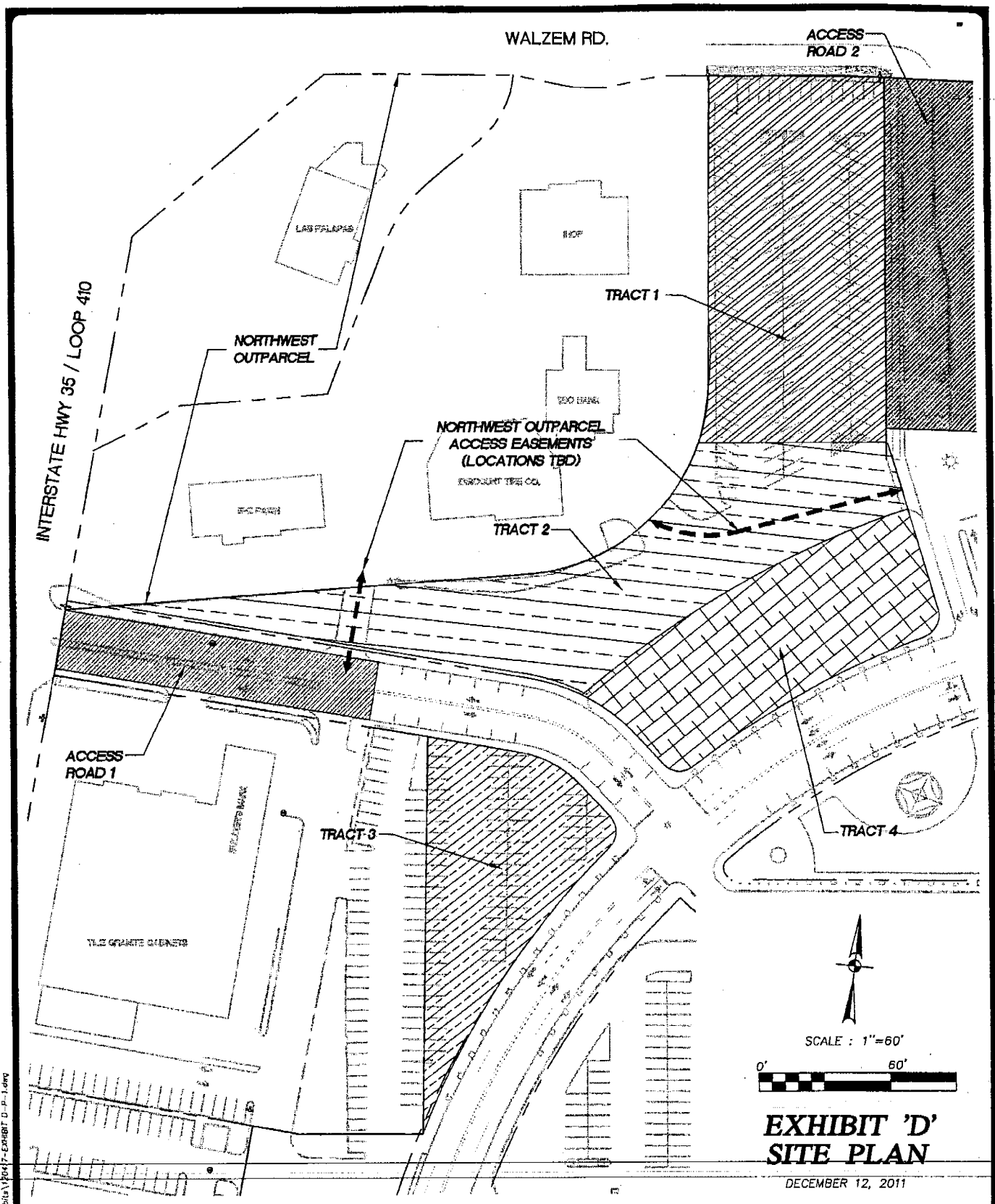


EXHIBIT 'D' SITE PLAN

DECEMBER 12, 2011

PAPE-DAWSON ENGINEERS

555 EAST RAMSEY | SAN ANTONIO, TEXAS 78216 | PHONE: 210.375.9000 FAX: 210.375.9010

TEXAS BOARD OF PROFESSIONAL ENGINEERS, FIRM REGISTRATION # 470

Date: May 11, 2012, 3:47pm User: dlQuesada
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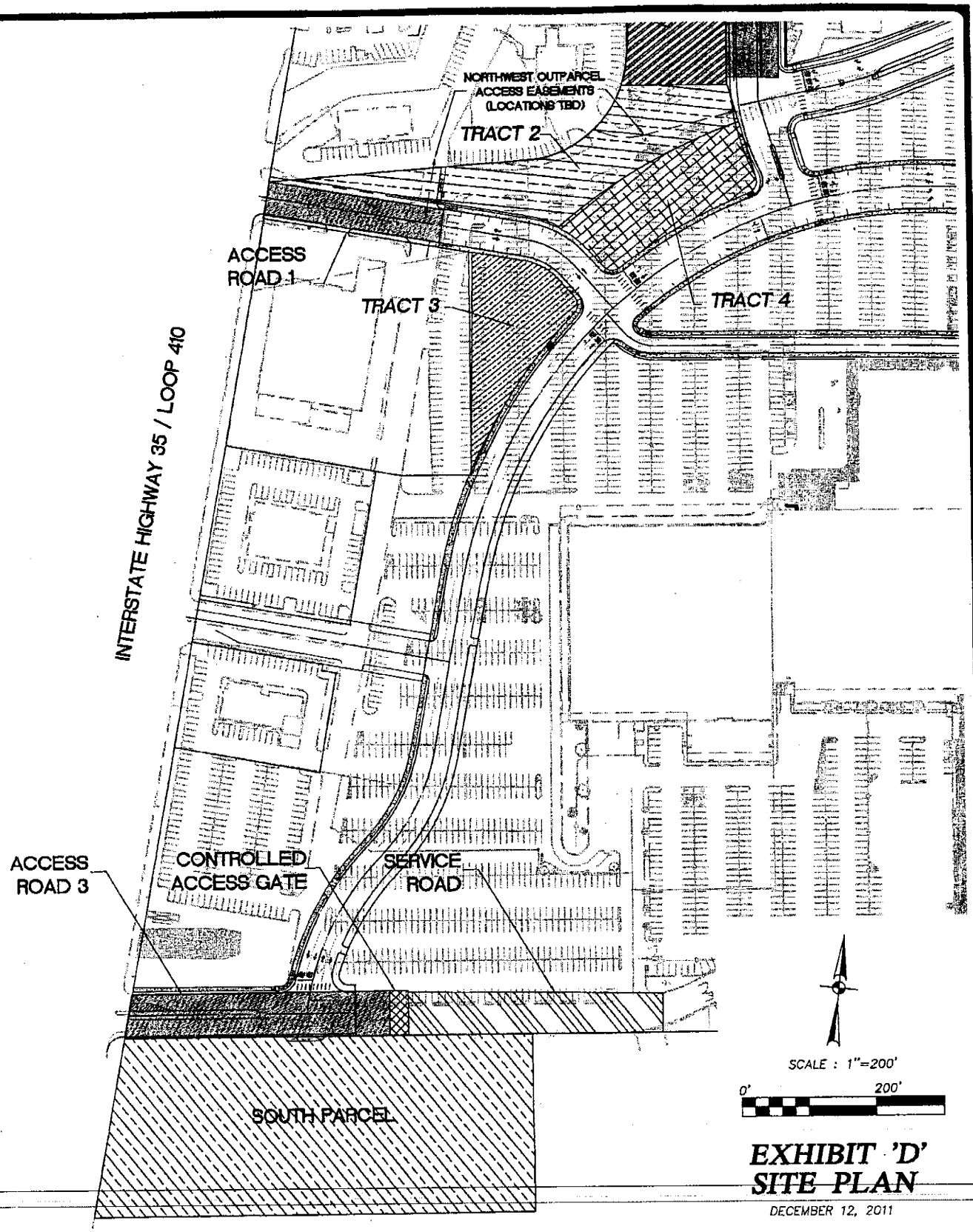

EXHIBIT 'D'
SITE PLAN

DECEMBER 12, 2011

PAPE-DAWSON ENGINEERS

555 EAST RAMSEY | SAN ANTONIO, TEXAS 78216 | PHONE: 210.375.9000 FAX: 210.375.9010

TEXAS BOARD OF PROFESSIONAL ENGINEERS, FIRM REGISTRATION # 470

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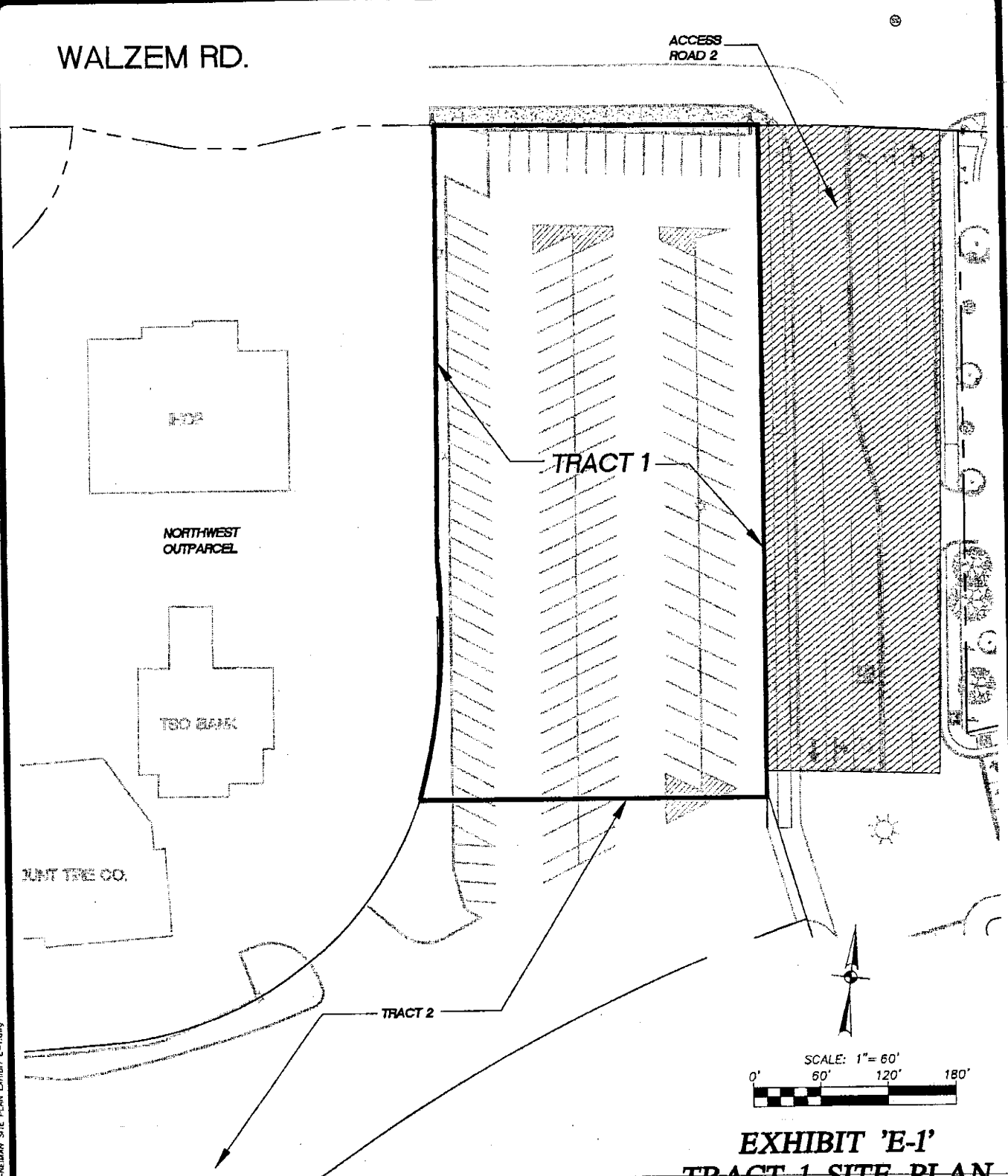

EXHIBIT 'E-1'
TRACT 1 SITE PLAN

MAY 2012

PAPE-DAWSON ENGINEERS

555 EAST RAMSEY | SAN ANTONIO, TEXAS 78216 | PHONE: 210.375.9000 FAX: 210.375.9010

TEXAS BOARD OF PROFESSIONAL ENGINEERS, FIRM REGISTRATION # 470

Date: May 11, 2012, 4:01pm User ID: CAcevedo
File: P:\65\84\30\Design\Exhibits\Y2005H-NEWMAN SITE PLAN EXHIBIT E-1.dwg

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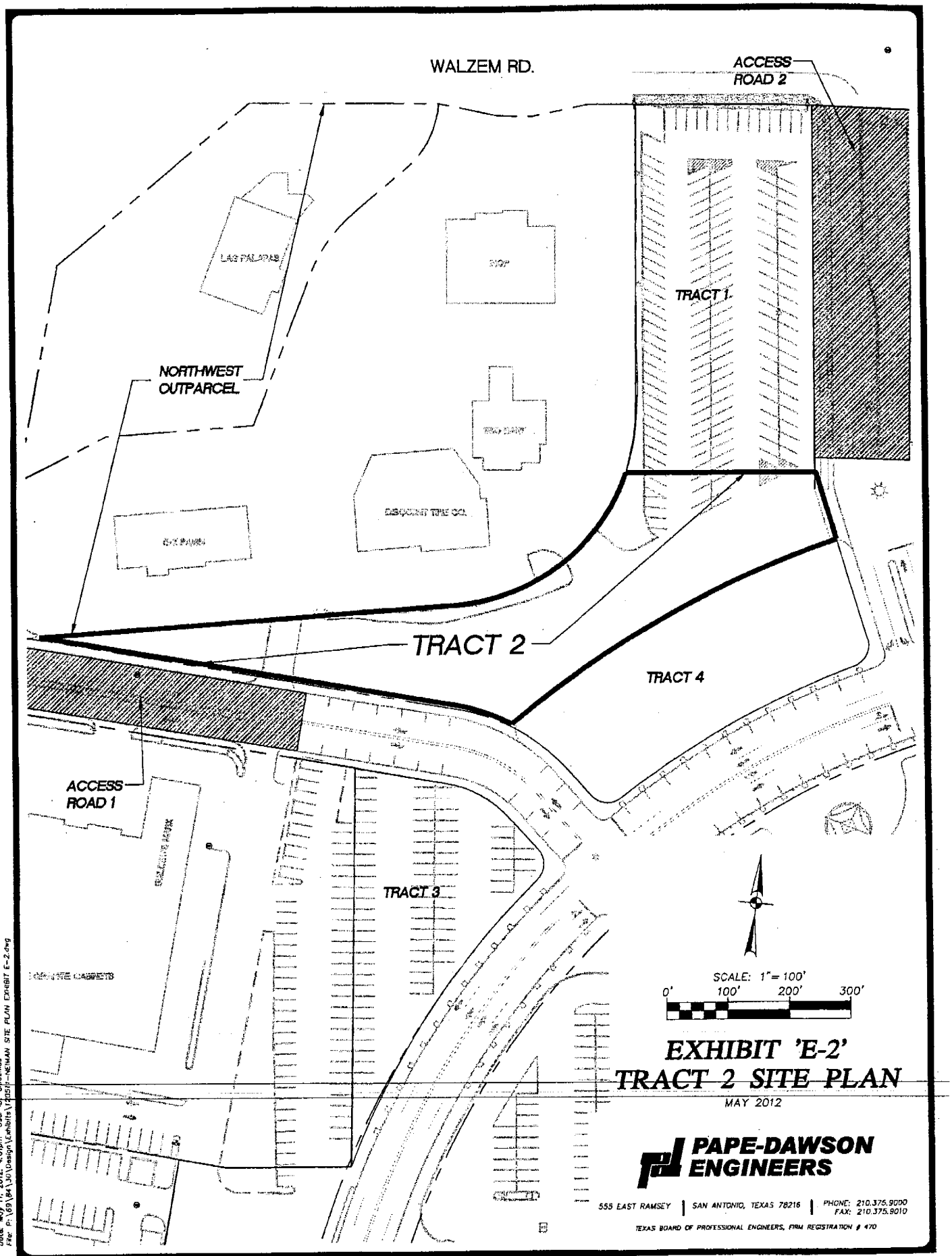

EXHIBIT 'E-2'
TRACT 2 SITE PLAN

MAY 2012

PAPE-DAWSON ENGINEERS

555 EAST RAMSEY | SAN ANTONIO, TEXAS 78216 | PHONE: 210.375.9000 FAX: 210.375.9010

TEXAS BOARD OF PROFESSIONAL ENGINEERS, FIRM REGISTRATION # 470

Date: May 11, 2012, 4:01pm User ID: Cifuentes
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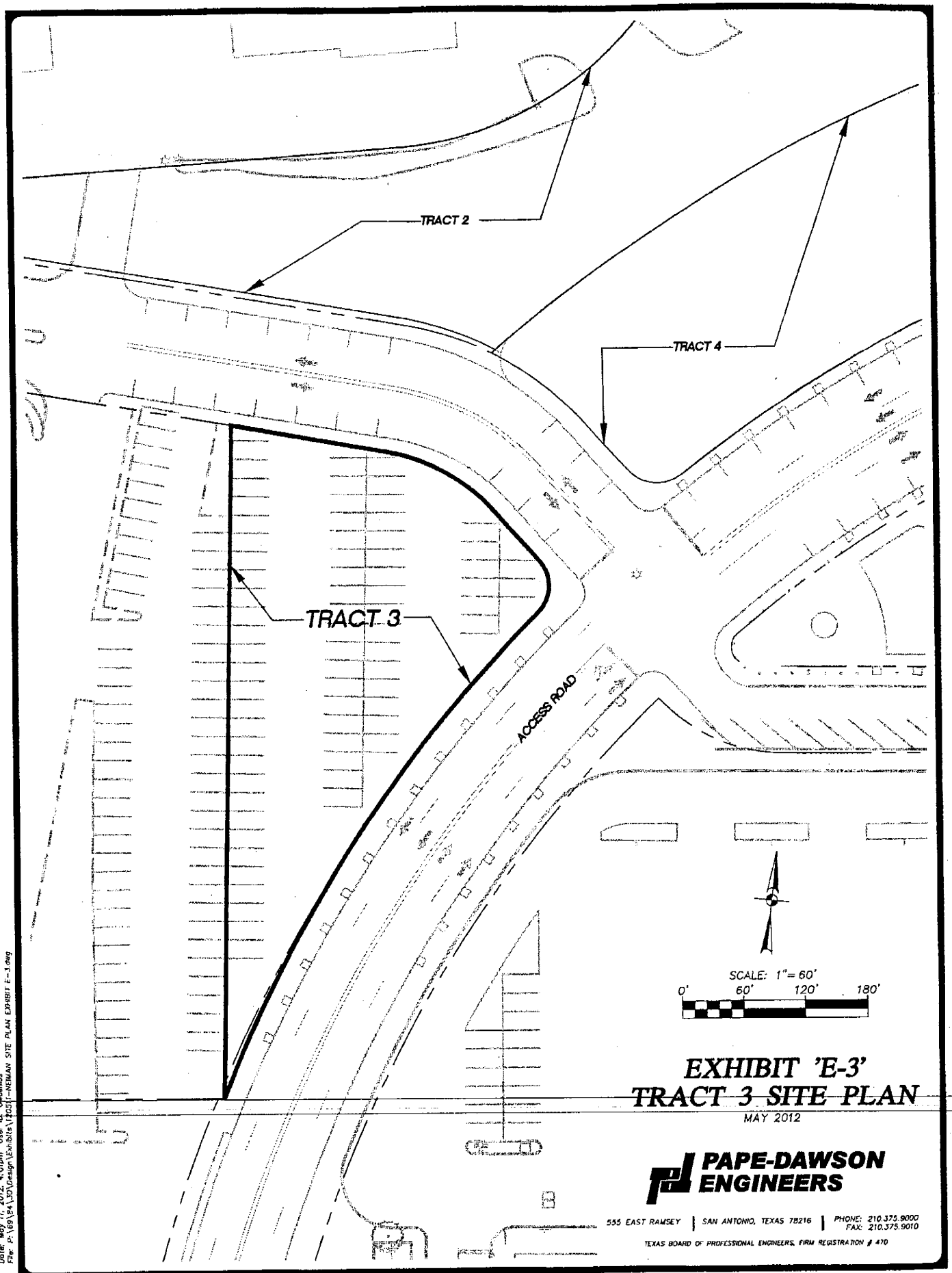

EXHIBIT 'E-3'
TRACT 3 SITE PLAN

MAY 2012

PAPE-DAWSON ENGINEERS

555 EAST RAWSEY | SAN ANTONIO, TEXAS 78216 | PHONE: 210.375.9000 FAX: 210.375.9010

TEXAS BOARD OF PROFESSIONAL ENGINEERS, FIRM REGISTRATION # 470

Date: May 11, 2012, 4:01pm User ID: GMonius
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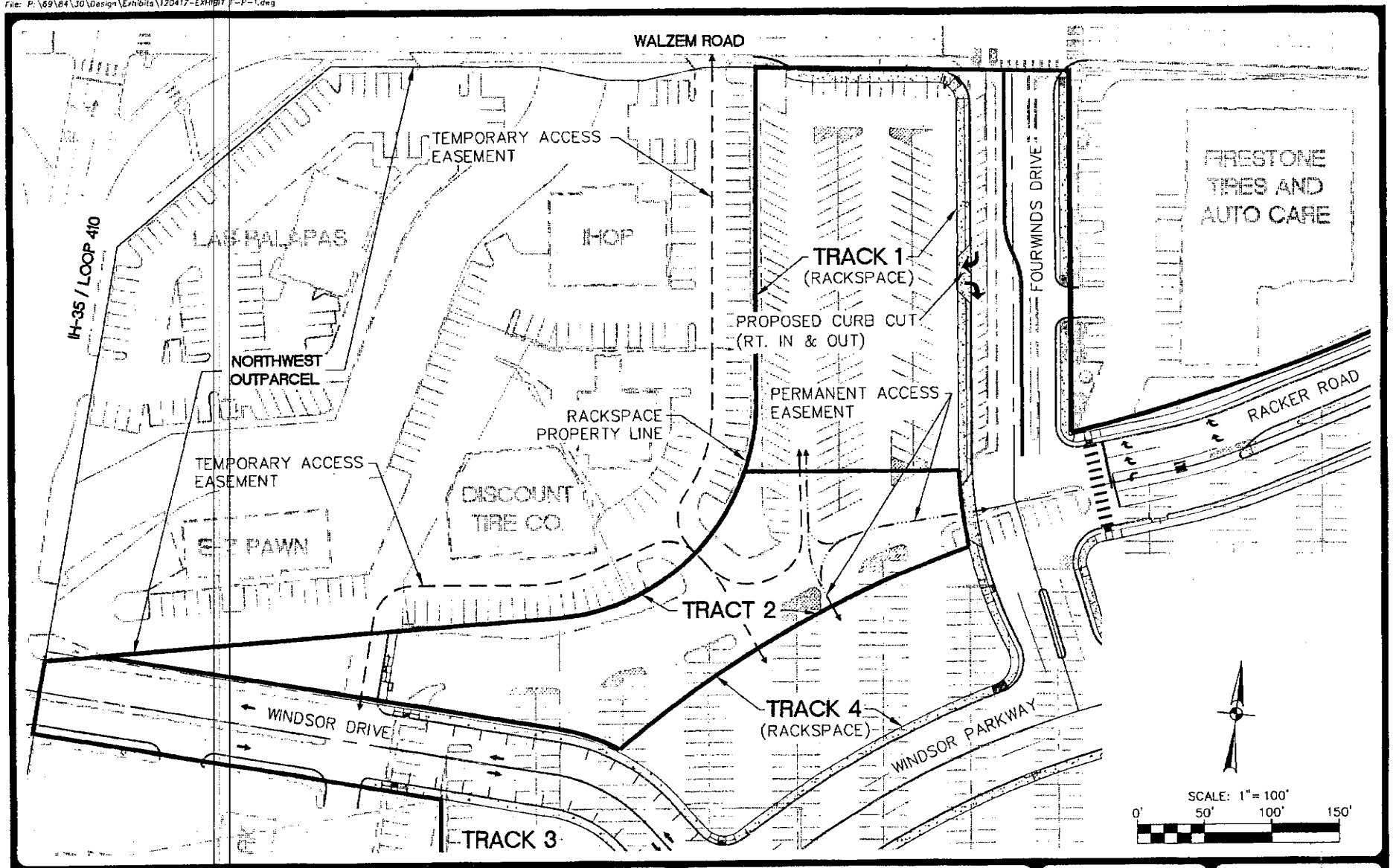

JOB NO. 6984-30
DATE JANUARY 2012
DESIGNER -
CHECKED - DRAWN TGO
SHEET 1 OF 2

EXHIBIT "F"
DETAILED SITE PLAN

PAPE-DAWSON ENGINEERS
555 EAST RAMSEY | SAN ANTONIO, TEXAS 78216 | PHONE: 210.375.9000 FAX: 210.375.9010
TEXAS BOARD OF PROFESSIONAL ENGINEERS, FIRM REGISTRATION # 470

REVISIONS:

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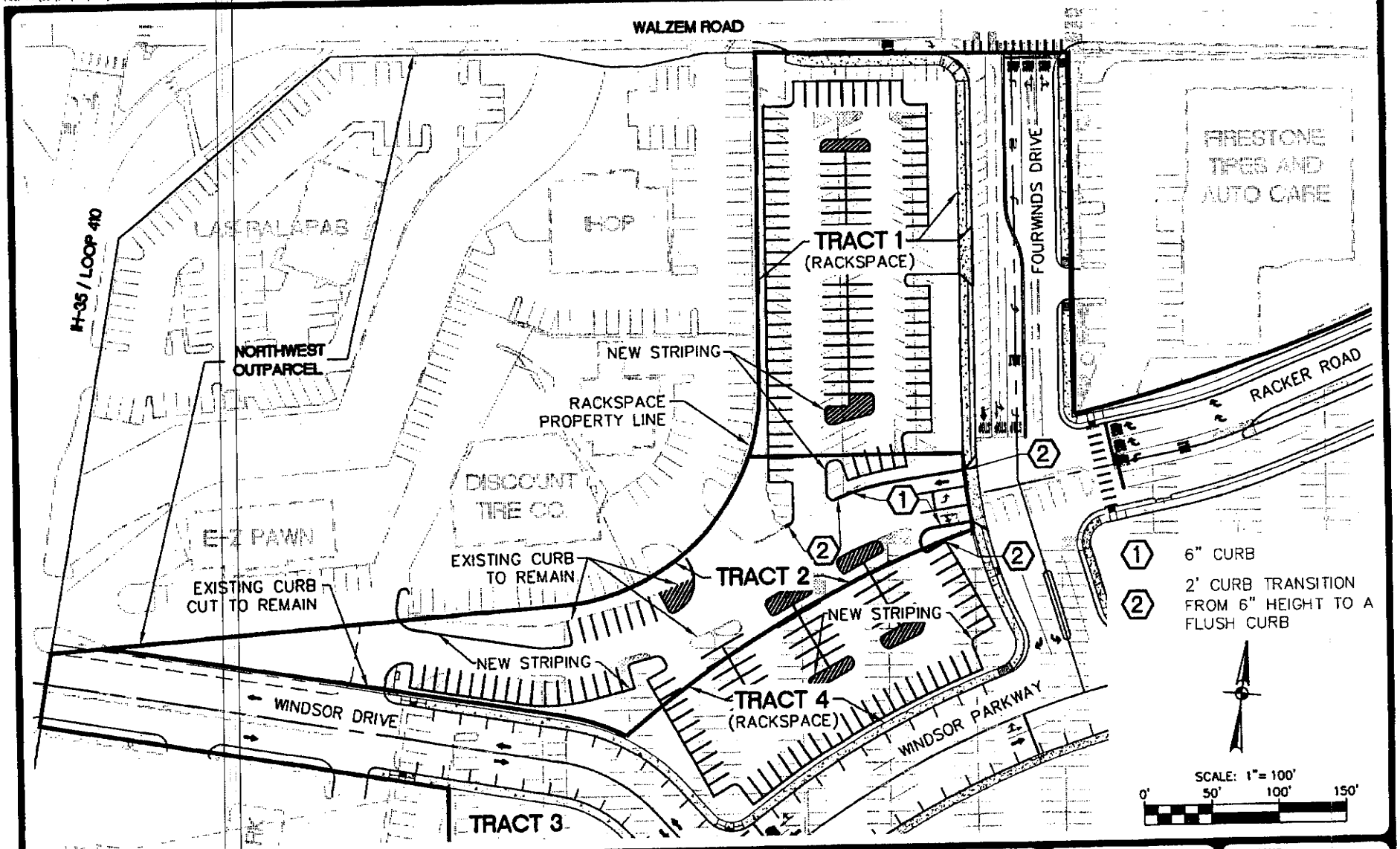

JOB NO. 6984-30
DATE JANUARY 2012
DESIGNER -
CHECKED - DRAWN TGD
SHEET 2 OF 2

EXHIBIT "F"
DETAILED SITE PLAN

PAPE-DAWSON ENGINEERS
555 EAST RAMSEY | SAN ANTONIO, TEXAS 78216 | PHONE: 210.375.9000 FAX: 210.375.9010
TEXAS BOARD OF PROFESSIONAL ENGINEERS, FIRM REGISTRATION # 470

REVISIONS:

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OPTION AGREEMENT

This Option Agreement (this "Agreement") is executed effective as of _____, 2012 (the "Effective Date"), by and among WINDCREST ECONOMIC DEVELOPMENT CORPORATION ("Owner"), and JAMES C. NIEMANN, TRUSTEE FOR THE NFP PARTNERSHIP, a Texas general partnership ("NFP"); and is hereby consented to by RACKSPACE US, INC., a Delaware corporation ("Rackspace").

WHEREAS, Owner is the fee owner of a parcel of real property located in the City of San Antonio, Bexar County, Texas, which is depicted on the site plan attached hereto as Exhibit "A" attached hereto and made a part hereof for all purposes (the "Property"). The Property is to be more fully described by metes and bounds that shall be substituted into Exhibit "A" in accordance with and as set forth in that certain Agreement Regarding Reciprocal Easements, Restrictions, Covenants and Conditions and Memorandum of Purchase Option of even date herewith, by and between Owner, NFP and Rackspace;

WHEREAS, NFP owns that certain property located adjacent to the Property, which is more fully described in Exhibit "B" attached hereto and made a part hereof for all purposes (the "NFP Parcel")

WHEREAS, NFP desires to obtain from Owner an exclusive option to purchase the Property (the "Option") and Owner wishes to grant such option;

WHEREAS, the Property comprises a portion of the premises ground leased by Rackspace from the Owner (the "Rackspace Leased Premises"), pursuant to that certain lease dated August 2, 2007, by and between Owner, as landlord, and Rackspace, as Tenant (the "Rackspace Lease"); and

WHEREAS, Rackspace has consented to the option granted herein, subject to terms, provisions and conditions hereof.

NOW, THEREFORE, in consideration of the premises and agreements herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by and among Owner, NFP and Rackspace as follows:

1. Exercise of Option. The parties acknowledge that the Property is currently benefitted by a tax-exempt status. On the earlier to occur of (i) no more than ninety (90) days following the date upon which Owner receives written notice from NFP stating that NFP desires to exercise the Option (which notice by NFP may be given at any time during the term of this Agreement), (ii) no more than ninety (90) days following the date upon which Owner receives written notice from the Bexar County Appraisal District or other applicable governmental entity that the Property has lost its tax-exempt status or (ii) twelve (12) years following the Effective Date of this Agreement (in any of such events, the "Option Exercise Date"), Owner shall deliver a written notice to NFP either (a) acknowledging NFP's exercise of the option pursuant to clause (i) above, (b) informing NFP that the Property has lost its tax exemption pursuant to clause (ii) above, or (c)

informing NFP of the lapse of twelve (12) years from the Effective Date of this Agreement (in any of such events, the "Owner's Notice"), which Owner's Notice shall be accompanied by a fully executed and notarized Special Warranty Deed, in the form attached hereto as Exhibit "C" and made a part hereof for all purposes, conveying the Property from Owner to NFP. Upon receipt of the Special Warranty Deed, NFP may record the same in the Real Property Records of Bexar County, Texas.

Notwithstanding anything contained herein, at the time of such conveyance, the form of the Special Warranty Deed attached may be modified as necessary to (i) comply with the requirements of the Texas Property Code or any other applicable law, and (ii) correctly reference the names, addresses, signatories, and otherwise complete any bracketed language contained therein or complete any blanks therein.

As consideration for the foregoing rights and as the purchase price for the Property, NFP has paid to Owner, as of the Effective Date of this Agreement, the sum of One Hundred and No/100 Dollars ($100.00), and NFP has provided other good and valuable consideration therefor, including without limitation, the execution by NFP of that certain Termination and Release Agreement, dated of even date herewith, which terminates and releases in its entirety the easement rights previously granted in that certain Agreement dated August 25, 1972, recorded in Volume 6935, Page 332, in the Deed Records of Bexar County Texas, as amended by that certain Agreement dated January 24, 1977, recorded in Volume 8009, Page 221, in the Deed Records of Bexar County Texas, and that certain Satisfaction and Release dated September 15, 1977, recorded in Volume 8273, Page 575, in the Deed Records of Bexar County Texas.

All revenues and expenses with respect to the Property and which are applicable to the time period before and after the conveyance of the Property to NFP, determined in accordance with sound accounting principles consistently applied, shall be prorated between Owner and NFP.

2. Subordination to Rackspace Lease. Notwithstanding anything in this Agreement to the contrary, NFP expressly acknowledges and agree that (i) Rackspace has an option to purchase the Rackspace Leased Premises under the Rackspace Lease, which includes, without limitation, the Property (the "Rackspace Option"); (ii) any and all rights of NFP to the Property, including, without limitation, the Option contained herein, are subordinate to and inferior to any and all rights of Rackspace under the Rackspace Lease, including, without limitation, the Rackspace Option; (iii) in the event that Rackspace exercises the Rackspace Option prior to the Option Exercise Date hereunder and acquires the Property from Owner, then Rackspace shall become the Owner of the Property and all references herein to "Owner" shall be deemed to refer to Rackspace; and (iv) in the event Rackspace has not exercised the Rackspace Option before the Option Exercise Date, then ~~concurrent with the deliver of the Special Warranty Deed under this Agreement,~~ Rackspace shall release the Property from the Rackspace Leased Premises under the Rackspace Lease.

3. No Effect on Tax-Exemption. The Rackspace Leased Premises (of which the Property is a portion) is benefitted by a tax-exempt status pursuant to the Rackspace

Lease and that certain Master Economic Incentives Agreement dated August 2, 2007 (the "MEIA"), which tax-exemption was granted to Rackspace for the purpose of (i) inducing Rackspace to relocate its corporate headquarters to the Rackspace Leased Premises and (ii) facilitating certain Business Activities (as defined in the MEIA) on the Rackspace Leased Premises. Notwithstanding anything in this Agreement to the contrary, the parties expressly acknowledges and agree that (i) the grant of the Option contained herein was in furtherance of the foregoing goals because the Option was granted in order to facilitate the relocation of the former Windsor Park Mall ring road which in turn was necessary in order to facilitate the foregoing goals, (ii) this Agreement facilitates the redevelopment of the Rackspace Leased Premises as contemplated in the MEIA and the Rackspace Lease and therefore, entering into this Agreement is within the valid purposes of the Rackspace Lease, the MEIA and the tax-exemption granted therein, (iii) nothing contained in this Agreement, including without limitation, the grant of the Option contained herein, is intended to, nor shall the same be deemed to, (a) cause any portion of the Rackspace Leased Premises to lose its tax-exempt status or (b) be a failure to conduct Business Activities or a cessation of Business Activities on the Rackspace Leased Premises under the MEIA, and (iv) if anything contained in this Agreement, including without limitation, the grant of the Option contained herein, is in fact ever deemed by any third party to, (a) cause any portion of the Rackspace Leased Premises (other than the Property) to lose its tax-exempt status or (b) be a failure to conduct Business Activities or a cessation of Business Activities on the Rackspace Leased Premises under the MEIA, then Owner shall have the right to notify NFP of the same, whereupon (x) this Option shall be deemed automatically exercised and the "Option Exercise Date" shall be deemed to be the date upon which Owner delivers such notice to NFP and (y) the Option Property shall be assessed as a separately-assessed tax parcel from the balance of the Rackspace Parcel such that the balance of the Rackspace Parcel may maintain its tax-exempt status.

4. Assignment. NFP shall not assign its interest in this Agreement or any of its rights hereunder to any other person or entity at any time without Owner's consent. Any sale by Owner of the Property during the term of this Agreement shall be subject to this Agreement, and the purchaser of the Property shall assume all of the obligations of Owner hereunder from and after the date of such sale.

5. Commissions. Owner shall indemnify and hold harmless NFP from and against any and all liabilities arising from any claims relating to real estate commissions, which claims are caused or incurred by Owner. NFP shall indemnify and hold harmless Owner from and against any and all liabilities arising from any claims relating to real estate commissions, which claims are caused or incurred by NFP.

6. Condemnation. In the event that, prior to the conveyance of the Property to NFP, any portion of the Property which, in NFP's sole opinion, is not material to the ~~use of the remainder, shall be condemned or taken by eminent domain by any authority,~~ then in such case, this Agreement shall not terminate, but shall remain in full force and effect as to the remainder of the Property. In the event of a taking by condemnation or similar proceedings or actions of all of the Property, or any portion of the Property which, in NFP's sole opinion, is material to the use of the remainder, NFP shall have the option to terminate this Agreement upon written notice to Owner, in which event neither NFP

nor Owner shall have any further right or obligation hereunder except as expressly set forth herein.

7. Risk of Loss. Owner shall bear all risk of loss to the Property until such time as Owner has delivered the Special Warranty Deed to NFP and title to the Property has passed to NFP.

8. Remedies on Default. In the event of a default hereunder on the part of Owner, NFP may exercise any one or more of the following as its sole and exclusive remedies: (i) terminate this Agreement or (ii) enforce the remedy of specific performance against Owner. In the event of a default hereunder on the part of NFP, Owner shall have the right to exercise one or more of the following as its sole and exclusive remedies: (i) terminate this Agreement or (ii) enforce the remedy of specific performance against NFP.

9. Notices. All notices, demands, statements, and requests (collectively the "Notice") required or permitted to be given under this Agreement must be in writing and shall be deemed to have been properly given or served as of the date hereinafter specified: (i) on the date of personal service upon the party to whom the notice is addressed or if such party is not available the date such notice is left at the address of the party to whom it is directed, (ii) on the date the notice is postmarked by the United States Post Office, provided it is sent prepaid, registered or certified mail, return receipt request, and (iii) on the date the notice is delivered by a courier services (including Federal Express, Express Mail, Lone Star or similar operation) to the address of the Party to whom it is directed, provided it is sent prepaid, return receipt requested. The address of the signatories to this Agreement is set forth below:

If to Rackspace:	Rackspace Hosting Attn: General Counsel 5000 Walzem San Antonio, Texas 78218 Telephone No.: 210-312-4700 Fax No.: 210-312-4848
With a copy to:	Steve Golden Golden Steves Cohen & Gordon LLP 300 Convent Street, Suite 2600 San Antonio, Texas 78205 Telephone No.: (210) 745 3700 Fax No.: (210) 745 3737
If to NFP:	James C. Niemann, Trustee 1122 Colorado Street, Suite 313 Austin, Texas 78701 Attn: Fred Niemann, Jr. Telephone No.: (512) 474 6901 Email: fred.Niemann@gmail.com

If to Windcrest: Ray Watson
Director of Economic Development
8601 Midcrown
Windcrest, Texas 78239
Telephone No.: _____
Fax No.: 210-655-8776

10. Governing Law/Interpretation. The terms and conditions of this Agreement shall be construed, interpreted, and enforced in accordance with the laws of the State of Texas. Where required for proper interpretation, words in the singular shall include the plural; the masculine gender shall include the neuter and the feminine, and vice versa.

11. Memorandum of Exercise of Option. Concurrent with the delivery of the Special Warranty Deed to NFP and conveyance of the Property to NFP, Owner shall have the right to record in the real property records of Bexar County, Texas a memorandum confirming the exercise of the Option hereunder and termination of this Agreement.

12. Attorneys' Fees. In the event that it becomes necessary for either party hereto to file suit to enforce this Agreement or any provisions contained herein, the party prevailing in such action shall be entitled to recover, in addition to all other remedies or damages, its reasonable attorneys' fees incurred in such suit.

13. Headings. The descriptive headings contained in this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

14. Entire Agreement. This Agreement, including any and all exhibits hereto, constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the parties in connection therewith. No representation, warranty, covenant, agreement, or condition not expressed in this Agreement shall be binding upon the parties hereto or shall affect or be effective to interpret, change, or restrict the provisions of this Agreement.

15. Construction. The parties agree that this Agreement is the result of negotiations between the parties, and that any rule of construction that a document is to be construed against the party that drafted it shall not apply to this Agreement.

16. Survival. The parties agree that any provision contained in this Agreement which by its nature imposes any obligation or duty upon any party hereto, or gives any right or benefit to any party hereof, continuing beyond the conveyance of the Property to NFP, shall not be canceled and considered merged into the Special Warranty Deed, but shall instead survive the conveyance of the Property to NFP and continue in full force and effect, subject, however, to any statutory limitations periods.

17. Time Period Calculation. Should the calculation of any of the various time periods provided for herein result in either an obligation becoming due on a Saturday, Sunday, or legal holiday or a date otherwise of particular significance occurring on a Saturday, Sunday, or legal holiday, then the due date of such obligation or scheduled time of occurrence of such event shall be delayed until the next business day.

18. Amendment. This Agreement may not be modified or amended except by an Agreement in writing signed by Owner, NFP and Rackspace.

19. Successors and Assigns. This Agreement and the provisions hereof shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors, and permitted assigns.

20. Time of the Essence. Time is of the essence of this Agreement.

21. Multiple Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement shall be binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected herein as signatories.

IN WITNESS WHEREOF, the parties have caused this Option Agreement to be executed by their duly authorized representative with their respective signatures below, effective as of the above-written date.

OWNER:

WINDCREST ECONOMIC DEVELOPMENT CORPORATION

By: _____
Name: _____
Title: _____

NFP:

James C. Niemann, Trustee for The NFP Partnership,
a Texas general partnership

By: _____
Name: James C. Niemann
Title: Trustee

RACKSPACE:

RACKSPACE US, INC.
a Delaware corporation

By: _____
Name: _____
Title: _____

Exhibit A
Site Plan of the Property

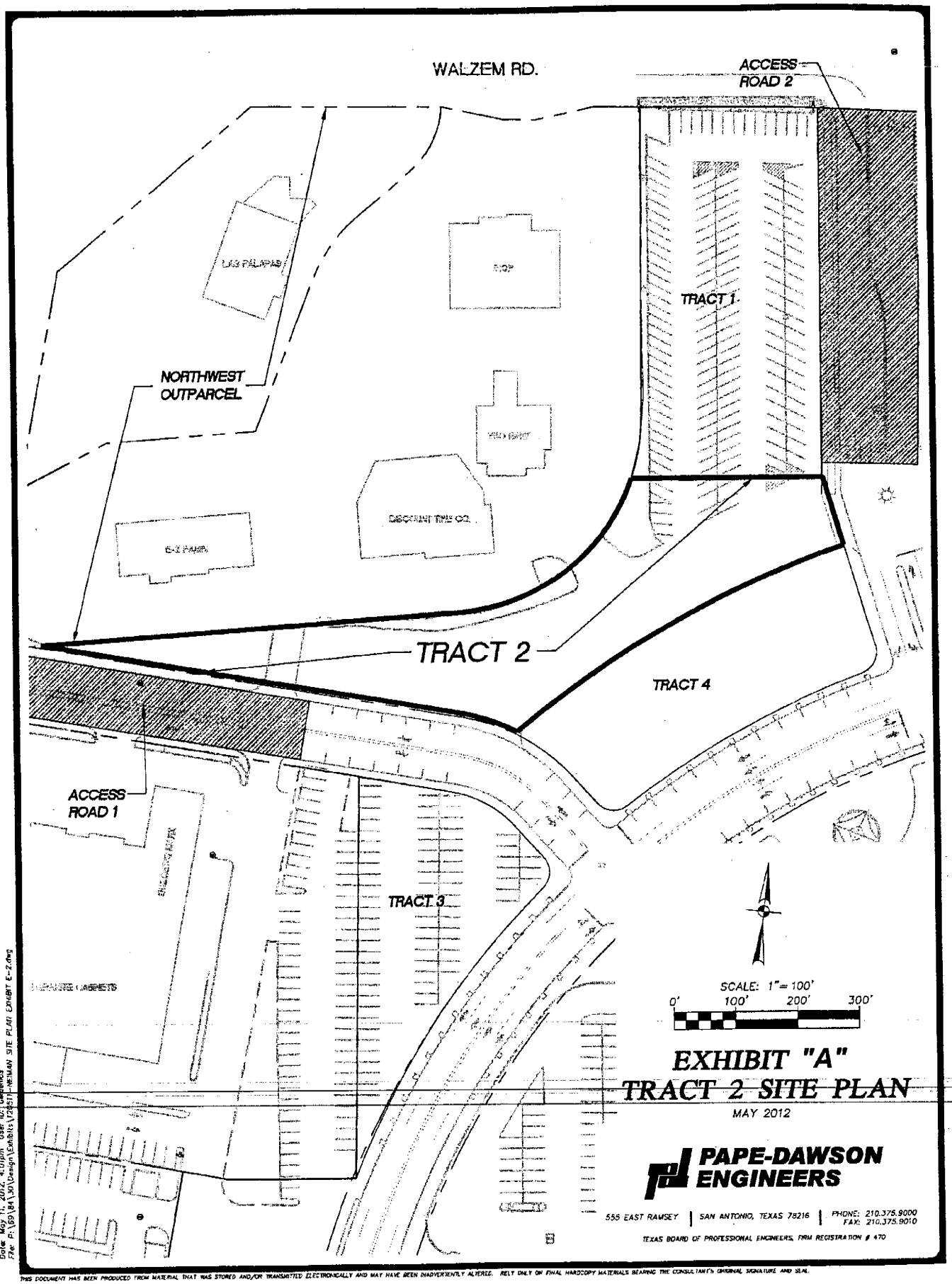


EXHIBIT "A"
TRACT 2 SITE PLAN

MAY 2012

PAPE-DAWSON ENGINEERS

555 EAST RAMSEY | SAN ANTONIO, TEXAS 78216 | PHONE: 210.375.9000 FAX: 210.375.9010

TEXAS BOARD OF PROFESSIONAL ENGINEERS, FIRM REGISTRATION # 470

Date: May 11, 2012, 4:01pm User ID: DMcencus
File: P:\89\84\30\Design\Exhibits\126511-NEWMAN SITE PLAN EXHIBIT E-2.dwg

THIS DOCUMENT HAS BEEN PRODUCED FROM MATERIAL THAT WAS STORED AND/OR TRANSMITTED ELECTRONICALLY AND MAY HAVE BEEN INADVERTENTLY ALTERED. RELY ONLY ON FINAL HARDCOPY MATERIALS BEARING THE CONSULTANT'S ORIGINAL SIGNATURE AND SEAL.

Exhibit B
Legal Description of the NFP Parcel

That certain property comprising all of Lot 23, of the Walzem Road Subdivision, being more particularly described on the map or plat thereof recorded in Volume 7100, Page 12 of the Deed and Plat Records of Bexar County, Texas.

TOGETHER WITH:

That certain property comprising all of Lot 30, N.C.B. 12190, Simon Subdivision, being more particularly described on the map or plat thereof recorded in Volume 7800, Page 187 of the Deed and Plat Records of Bexar County, Texas.

Exhibit C

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF ALL OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

SPECIAL WARRANTY DEED

THE STATE OF TEXAS §
§ **KNOW ALL MEN BY THESE PRESENTS:**
COUNTY OF BEXAR §

THAT THE UNDERSIGNED, *[WINDCREST ECONOMIC DEVELOPMENT CORPORATION or RACKSPACE US, INC., a Delaware corporation, as applicable]* ("Grantor"), for and in consideration of the sum of TEN DOLLARS ($10.00) cash, and other good and valuable consideration paid to Grantor by *[JAMES C. NIEMANN, TRUSTEE FOR THE NFP PARTNERSHIP, a Texas general partnership or its successors]* ("Grantee"), with an address of *[1122 Colorado Street, Suite 313, Austin, Texas 78701 or the then-current address]*, the receipt and sufficiency of which are hereby fully acknowledged and confessed, has GRANTED, SOLD and CONVEYED, and by these presents does hereby GRANT, SELL and CONVEY unto Grantee, all of that certain real property in Bexar County, Texas being more particularly described in **Exhibit "A"** attached hereto and made part hereof for all purposes (the "Property").

This conveyance is made and accepted subject to all restrictions, easements, encumbrances and any other matters of record in Bexar County, Texas, that affect the Property as of the date of this deed.

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereto in anywise belonging unto the said Grantee, its successors and assigns forever; and Grantor does hereby bind Grantor and Grantor's successors to WARRANT AND FOREVER DEFEND all and singular the Property unto the said Grantee, and Grantee's successors and assigns, against every person whomsoever claiming or to claim the same or any part thereof, by, through or under Grantor, but not otherwise.

GRANTEE WARRANTS AND ACKNOWLEDGES TO AND AGREES WITH GRANTOR THAT GRANTEE IS PURCHASING THE PROPERTY IN ITS "AS-IS, WHERE IS" CONDITION "WITH ALL FAULTS" AS OF THE DATE OF THIS DEED AND SPECIFICALLY AND EXPRESSLY WITHOUT ANY WARRANTIES, REPRESENTATIONS OR GUARANTEES, WHETHER EXPRESS OR IMPLIED, AS TO ITS CONDITION, FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY, OR ANY OTHER WARRANTY OF ANY KIND, NATURE,

OR TYPE WHATSOEVER FROM OR ON BEHALF OF GRANTOR. GRANTOR SPECIFICALLY DISCLAIMS ANY WARRANTY, GUARANTY OR REPRESENTATION, ORAL OR WRITTEN, PAST OR PRESENT, EXPRESS OR IMPLIED, CONCERNING (A) THE VALUE, NATURE, QUALITY OR CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, STRUCTURAL INTEGRITY, SOIL AND GEOLOGY; (B) THE INCOME TO BE DERIVED FROM THE PROPERTY; (C) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH GRANTEE MAY CONDUCT THEREON, INCLUDING THE POSSIBILITIES FOR FUTURE DEVELOPMENT OF THE PROPERTY; (D) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY; (E) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY; (F) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE PROPERTY; (G) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY: (H) THE PRESENCE OF ABSENCE OF HAZARDOUS MATERIALS AT, UNDER, OR ADJACENT TO THE PROPERTY OR ANY OTHER ENVIRONMENTAL MATTER OR CONDITION OF THE PROPERTY; OR (I) ANY OTHER MATTER WITH RESPECT TO THE PROPERTY. GRANTEE ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED BY OR ON BEHALF OF GRANTOR WITH RESPECT TO THE PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT GRANTOR HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. GRANTOR IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY ORAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY, OR THE OPERATION THEREOF, FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE, SERVANT OR OTHER PERSON. GRANTEE FURTHER ACKNOWLEDGES AND AGREES THAT GRANTEE IS A SOPHISTICATED AND EXPERIENCED GRANTEE OF PROPERTIES SUCH AS THE PROPERTY AND HAS BEEN DULY REPRESENTED BY COUNSEL IN CONNECTION WITH THE ACQUISITION OF THIS PROPERTY.

No use or operation will be made, conducted or permitted on or with respect to all or any part of the Property, which is obnoxious to or out of harmony with the development or operation of that certain property containing approximately *[66.99]* acres being more particularly described in Exhibit B attached hereto and made a part hereof for all purposes (the "Grantor's Adjacent Land"), including, but not limited to, any of the following uses: any nuisance; any use which violates the requirement of any applicable law of any applicable governmental authority; the primary use of any building as a warehouse; an assembly hall; distillation operation; a telecommunications tower; mobile home or trailer park; the drilling for and/or removal of subsurface substances; kennel where animals are kept overnight; game room or amusement park; skating rink; pool hall or billiard parlor; bowling alley; dancehall; saloon, cocktail lounge, nightclub or bar;

mortuary or funeral home; automobile body and repair shop; flea market; or adult book store or store selling sexually explicit material. The foregoing use restrictions shall run with the land restricted hereby and shall inure to the benefit of Grantor, its successors and assigns in Grantor's Adjacent Land.

[Signature Page Follows]

EXECUTED to be effective the _____ day of _____, 20____.

GRANTOR:

[WINDCREST ECONOMIC DEVELOPMENT CORPORATION

By: _____
Name: _____
Title: _____

THE STATE OF TEXAS §
§
COUNTY OF BEXAR §

The foregoing instrument was acknowledged before me on this ____ day of _____, 20____, by _____, the _____ of Windcrest Economic Development Corporation, on behalf of said corporation.

_____
NOTARY PUBLIC, in and for
THE STATE OF TEXAS

OR

RACKSPACE US, INC.
a Delaware corporation

By: _____
Name: _____
Title: _____

THE STATE OF TEXAS §
§
COUNTY OF BEXAR §

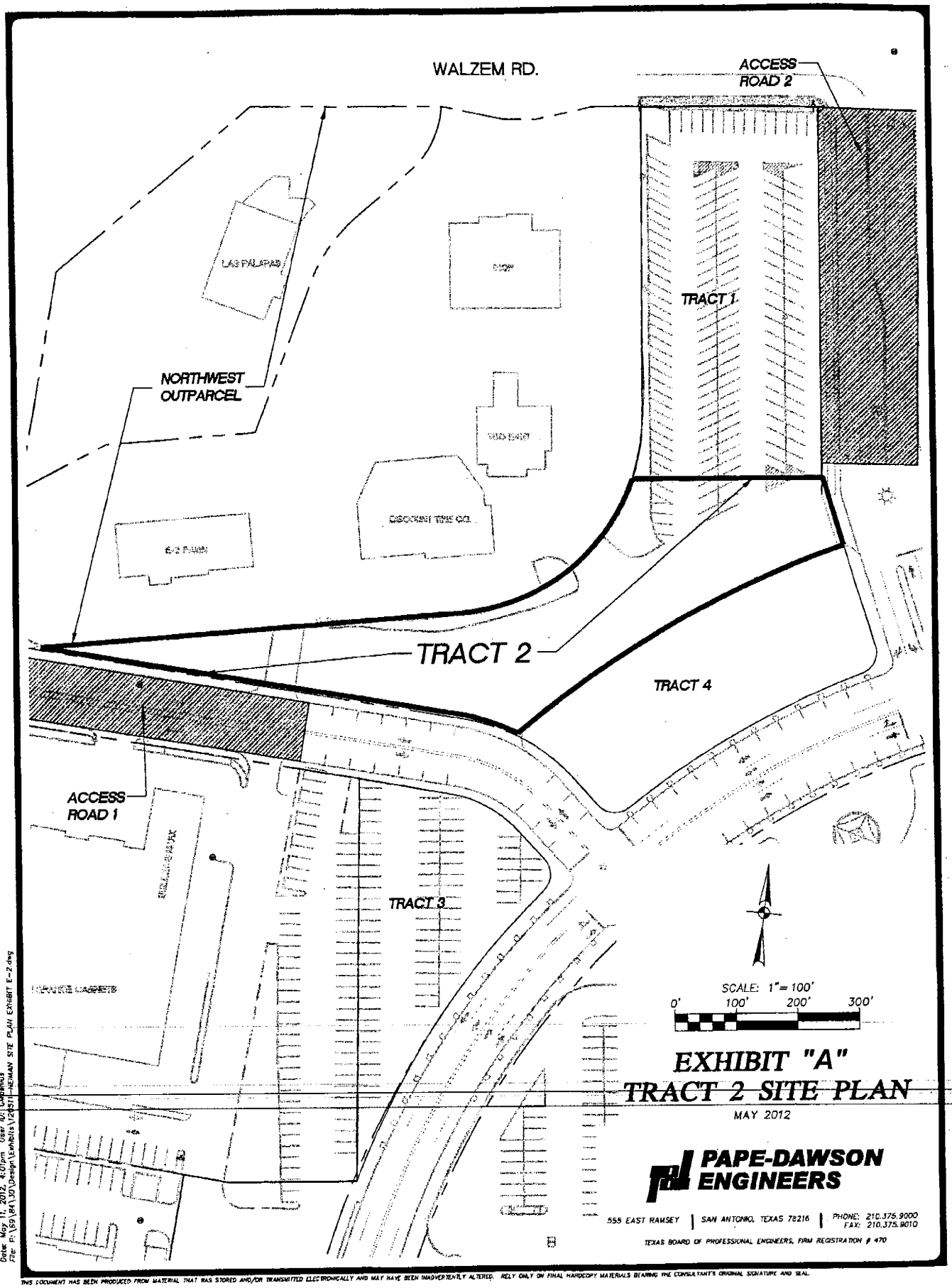
The foregoing instrument was acknowledged before me on this ____ day of _____, 20____, by _____, the _____ of Windcrest Economic Development Corporation, on behalf of said corporation.

_____
NOTARY PUBLIC, in and for
THE STATE OF TEXAS

AFTER RECORDING, PLEASE RETURN TO:

Exhibit A to Deed
Legal Description of the Property

[Insert legal description of the Property]



Date: May 11, 2012, 4:01pm User ID: GMgenius
File: P:\99\84\30\Design\Exhibits\126511-NEIMAN SITE PLAN EXHIBIT E-2.dwg

THIS DOCUMENT HAS BEEN PRODUCED FROM MATERIAL THAT WAS STORED AND/OR TRANSMITTED ELECTRONICALLY AND MAY HAVE BEEN INADVERTENTLY ALTERED. RELY ONLY ON FINAL HARDCOPY MATERIALS BEARING THE CONSULTANT'S ORIGINAL SIGNATURE AND SEAL.

EXHIBIT B

BEGINNING at a 3/4" iron rod found in the east line of Interstate Highway (IH) 35/ Loop 410 (R.O.W. Varies), also being the southwest corner of said Lot 44, and being the northwest corner of Lot 36, of the Replat of Toys "R" Us Subdivision, recorded in Volume 9520, Page 187, (D.P.R.B.C.T.), for the southwest corner and POINT OF BEGINNING hereof, from which a 4" Texas Department of Transportation (TXDOT) brass disk monument found in the east line of said IH 35/ Loop 410 at station 1882+00 and offset right 213.20', bears S09°56'18"W, a distance of 454.36 feet;

THENCE, with the east line of said IH 35/ Loop 410, same being the west line of said Lot 44, N09°56'18"E, a distance of 437.50 feet to 1/2-inch iron rod found for an angle point hereof, same being the southwest corner of Lot 45 of said Replat Establishing Simon Apple Garden;

THENCE, leaving the east line of said IH 35/ Loop 410, same being the west line of said Lot 44, with the common line between said Lots 44 and 45, the following five (5) courses and distances:

1) S80°21'18"E, a distance of 217.15 feet to a PK nail found for an angle point hereof, same being the southeast corner of said Lot 45, and a southeast corner of said Lot 44;
2) N10°05'00"E, a distance of 147.36 feet to a 1/2-inch iron rod found for an angle point hereof, same being a northeast corner for said Lot 45, also being an angle point for said Lot 44;
3) N80°16'37"W, a distance of 22.47 feet to a 1/2-inch iron rod found for an angle point hereof, same being an angle point for said Lots 44 and 45;
4) N09°43'58"E, a distance of 9.05 feet to a 1/2-inch iron rod found for an angle point hereof, same being a northeast corner for said Lot 45, also being an angle point for said Lot 44;
5) N80°08'26"W, a distance of 395.02 feet to a 1/2-inch iron rod found for an angle point hereof, same being the northwest corner of said Lot 45, also being an angle point of said Lot 44, same being a point in the east line of said IH 35/ Loop 410;

THENCE, with the east line of said IH 35/ Loop 410, same being the west line of said Lot 44, N09°56'18"E, a distance of 64.23 feet to a 1/2-inch iron rod with "Vickery" cap found for an angle point hereof, same being the southwest corner of Lot 46 of said Replat Establishing Simon Apple Garden, also being an angle point for said Lot 44;

THENCE, leaving the east line of said IH35/ Loop 410, same being the west line of said Lot 44, with the common line between said Lots 44 and 46, S80°07'28"E, a distance of 225.13 feet to a 1/2-inch iron found for an angle point hereof, same being the southeast corner of said Lot 46, also being an angle point for said Lot 44;

THENCE, continuing with the common line between said Lots 44 and 46, N09°56'34"E, a distance of 230.05 feet a 1/2-inch iron rod found for an angle point hereof, same being the northeast corner of said Lot 46, same being an angle point for said Lot 44;

THENCE, crossing through said Lot 24, S80°02'51"E, a distance of 37.96 feet to a PK nail found for an angle point hereof, same being an angle point for said 11.5384 acre tract, also being an angle point for said Lot 44;

THENCE, continuing through said Lot 24, with a north line of said 11.5384 acre tract, N89°45'32"E, a distance of 103.11 feet to a PK nail found for an angle point hereof, same being an angle point of said 11.5384 acre tract, said point lies within said Lot 24;

THENCE, continuing through said Lot 24, with a west line of said 11.5384 acre tract, N00°36'38"E, a distance of 327.41 feet to a PK nail found for an angle point hereof, same being an angle point of said 11.5384 acre tract, said point lies within said Lot 24;

THENCE, continuing through said Lot 24, with a south line of said 11.5384 acre tract, N80°48'25"W, a distance of 311.55 feet to a PK nail found for an angle point hereof, same being an angle point of said 11.5384 acre tract, and being a point in the west line of said Lot 24, also being a point in the east line of said IH35/ Loop 410;

THENCE, with the west line of said Lot 24, same being the east line of said IH 35/ Loop 410, N09°56'18"E, a distance of 54.60 feet to a 1/2-inch iron rod with "Doucet & Assoc," cap set for a northwest corner hereof, same being a northwest corner of said Lot 24, and the southwest corner of Lot 22 of the Simon Subdivision recorded in Volume 7300, Page 69, (D.P.R.B.C.T.);

THENCE, with the south line of said Lot 22, and the north line of said Lot 24, N85°26'50"E, a distance of 381.62 feet to a PK nail with "Brown" shiner found for a point of curvature (P.C.) hereof, same being a P.C. for said Lot 22, also being a northwest corner and P.C. of said Lot 25;

THENCE, continuing with the southeast line of said Lot 22, and with the northwest line of said Lot 25, along a curve to the left, whose radius is 159.75 feet, whose delta is 85°23'33", at an arc length of 238.09 feet, and overall chord which bears N42°47'06"E, a distance 216.66 feet to a 1/2-inch iron rod with

"Vickery" aluminum cap found for a point of tangency (P.T.) hereof, same being a P.T. for said Lots 22 and 25;

THENCE, continuing with the west line of said Lot 22, and the east line of said Lot 25, N00°05'45"E, a distance of 249.80 to a 1/2-inch iron rod with "Vickery" cap found for a northwest corner hereof, same being a northwest corner of said Lot 25, and a northeast corner of said Lot 22, same being a point in the south line of Walzem Road/ Farm to Market (FM) 1976 (R.O.W. Varies);

THENCE, with the south line of said Walzem Road/ FM 1976, and the north line of said Lot 25, N89°47'19"E, a distance of 112.39 feet to a Mag nail with "Brown" shiner found for an angle point hereof, same being an angle point for said Lot 25, also being an angle point for said Walzem Road/ FM 1976, from which a 4" Texas Department of Transportation (TXDOT) brass disk monument found bears, S76°06'59"W, a distance of 1.29 feet;

THENCE, continuing with the south line of said Walzem Road/ FM 1976, and the north line of said Lot 25, S88°27'18"E, a distance of 120.88 feet to a Mag nail with "Doucet" washer set for an angle point hereof;

THENCE, leaving the south line of said Walzem Road/ FM 1976, same being the north line of said Lot 25, passing through said Lot 25 the next four (4) courses and distances:

1) S00°17'20"E, distance of 268.51 feet to a Mag nail with "Doucet" washer set for an angle point hereof;
2) Along a curve to the right, whose radius is 921.48 feet, whose delta is 01°33'47"", whose arc length is 25.14 feet, and whose chord bears N77°14'29"E, a distance of 25.14 feet to a Mag nail with "Doucet" washer set for a point of reverse curvature (P.R.C.) hereof;

3) Along a curve to the left, whose radius is 750.00 feet, whose delta is 09°26'18", whose arc length is 123.55 feet, and whose chord bears N73°18'14"E, a distance of 123.41 feet to a Mag nail with "Doucet" washer set for a point of compound curvature (P.C.C.) hereof;
4) Along a curve to the left, whose radius is 2010.40 feet, whose delta is 03°54'26", whose arc length is 137.10' feet, and whose chord bears N66°37'52"E, a distance of 137.07 feet to a Mag nail with "Doucet" washer set for a point of compound curvature (P.C.C.) hereof;

THENCE, continuing through said Lot 25, and in part through said Lot 44, along a curve to the left, whose radius is 500.00 feet, whose delta is 10°19'44", at an arc length of 14.77 feet passing the common line between said Lots 25 and 44, for an overall arc length of 90.14 feet, and whose overall chord bears N59°30'47"E, a distance of 90.02 feet to a Mag nail with "Doucet" washer set for a P.R.C. hereof, said point lies within said Lot 44;

THENCE, continuing in part through said Lot 44, and through said Lot 38, along a curve to the right, whose radius is 500.00 feet, whose delta is 11°52'41", at an arc length of 3.44 feet passing the common line between said Lots 44 and 38, for an overall arc length of 103.66 feet, and whose overall chord bears N60°17'16"E, a distance of 103.47 feet to a Mag nail with "Doucet" washer set for a P.T. hereof, said point lies in said Lot 38;

THENCE, continuing through said Lot 38, N16°51'51"W, a distance of 69.10 feet to a PK nail with "Brown" shiner found for an angle point hereof, same being a point in the south line of said Walzem Road/ FM 1976, also being the northern most northwest corner of said Lot 38, and the northeast corner of said Lot 44;

THENCE, with the south line of said Walzem Road/ FM 1976, same being the north line of said Lot 38, N89°44'36"E, a distance of 592.04 feet to a 1/2-inch iron rod with "Vickery" aluminum cap found for an angle point hereof, same being an angle point in the south line of said Walzem Road/ FM 1976, and an angle point in the north line of said Lot 38;

THENCE, continuing with the south line of said Walzem Road/ FM 1976, same being the north line of said Lot 38, N88°28'52"E, a distance of 17.99 feet to a "X" cut in concrete for the northern most northeast corner hereof, same being the northern most northeast corner of said Lot 38, also being the northwest corner of Lot 39 of said Replat of Subdivision Plat of Simon Subdivision,

THENCE, leaving the south line of said Walzem Road/ FM 1976, with the common line between said Lots 38 and 39 the following four (4) courses and distances:

1) S00°16'05"E, a distance of 151.24 feet to a 1/2-inch iron rod with "Vickery" aluminum cap found for an angle point hereof, same being the southwest corner of said Lot 39, and an angle point for said Lot 38;
2) N89°45'07"E, a distance of 131.79 feet to a 1/2-inch iron rod found for an angle point hereof, same being a southeast corner of said Lot 39, also being an angle point for said Lot 38;
3) N00°14'38"W, a distance of 18.06 feet to a 1/2-inch iron rod with "Vickery" cap found for an angle point hereof, same being an angle point for said Lots 38 and 39;

4) N89°37'31"E, a distance of 27.57 feet to a PK nail found for the eastern most northeast corner hereof, same being the eastern most southeast corner for said Lot 39, and the eastern most northeast corner of said Lot 38, also being a point in the west line of Lot 2, Block 1 of the Replat and Subdivision Plat Establishing Roosevelt High School Subdivision recorded in Volume 9566, Page 132, (D.P.R.B.C.T.);

THENCE, in part with the east line of Lot 38 and in part with the east line of Lot 37, both of said Replat of Simon Subdivision, and with the west line of Lot 2 of said Roosevelt High School, S00°13'42"E, at a distance of 685.73 feet passing the northeast corner of Lot 37, and being the southeast corner of Lot 38, for a total distance of 1379.71 feet to a PK Nail with "Brown" washer found for an interior ell corner hereof, said point is also an interior ell corner of said Lot 37, and being the southwest corner of said Lot 2;

THENCE, with a north line of said Lot 37, and in part with the south line of said Lot 2, N89°35'15"E, a distance of 63.93 feet to a PK with Shiner found for an exterior ell corner hereof, said point is also an exterior ell corner of said Lot 37;

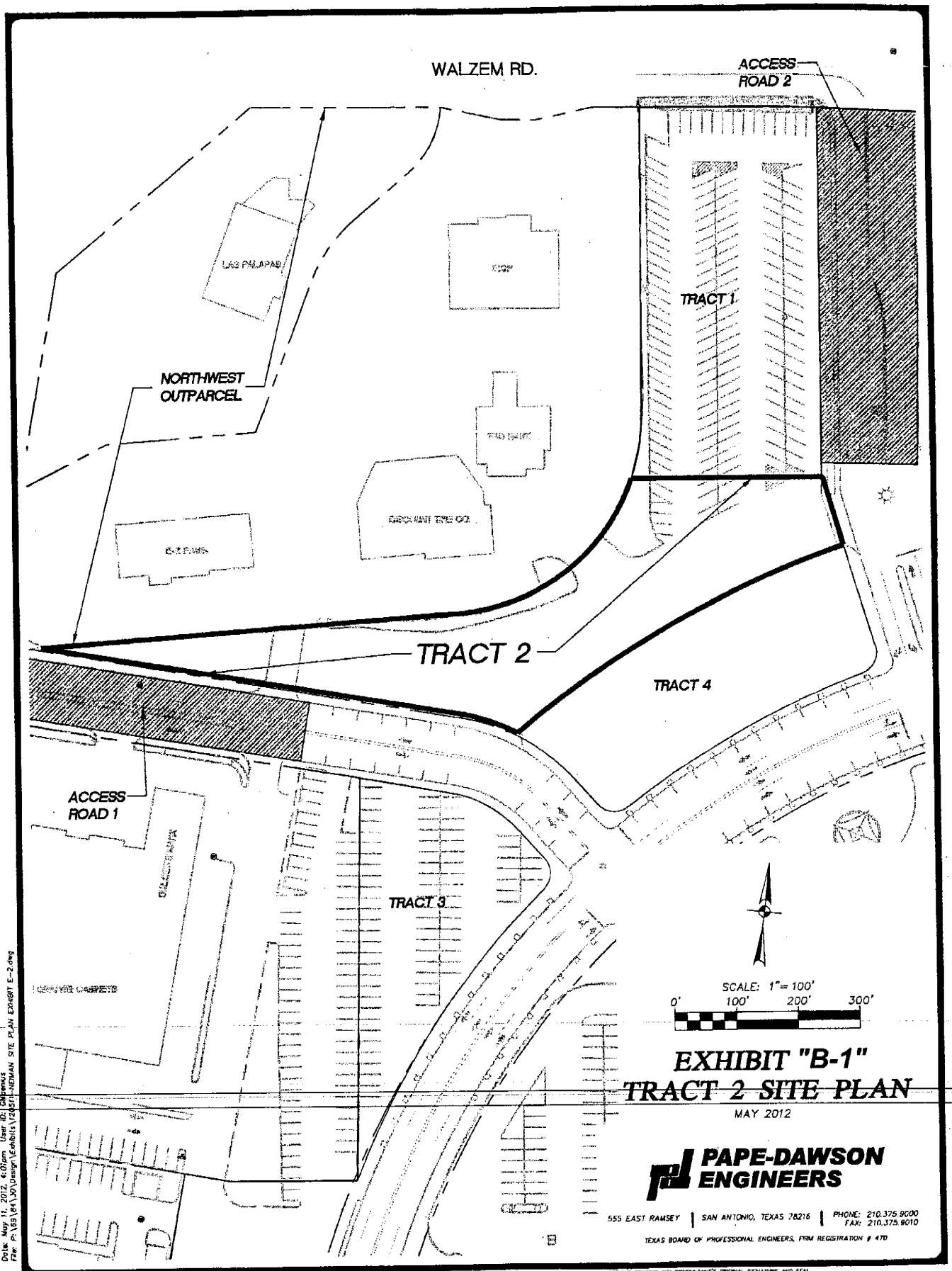
THENCE, in part with an east line of said Lot 37, and in part with an east line of Lot 44 of said Replat Establishing Simon Apple Garden, S00°31'25"E, a distance of 145.30 feet to a 1/2" iron rod found for a southeast corner hereof, said point is also a southeast corner of said Lot 44 and being the northwest corner of Lot 12, Block 10 of Camelot Subdivision Unit 7, recorded in Volume 6500, Page 144 (D.P.R.B.C.T.), and being a point in the east line of a 40' City Public Service Board Easement as shown on said plat,

THENCE, with the south line of said Lot 44, and the north line of said 40' City Service Board Easement, S89°43'01"W, a distance of 39.73 feet to a 1/2" iron rod found for an interior ell corner hereof, said point is also a point on the west line of said 40' City Public Service Board Easement, and being an interior ell corner of said Lot 44;

THENCE, with the west line of said 40' City Public Service Board Easement, and a west line of said Lot 44, S00°56'32"W, a distance of 15.88 feet to a 1/2" iron rod found for an exterior ell corner hereof, said point is also an exterior ell corner of said Lot 44, and being the northeast corner of Lot 13 of said Camelot Subdivision;

THENCE, in part with the north line of Lots 13-26, Block "D" of said Camelot Subdivision, and in part with the north line of Lot 9, Block "B", of Camelot Subdivision Unit 5A, recorded in Volume 6500, Page 16 (D.P.R.B.C.T.), and in part with the north line of Lot 49 of Windsor Square Wal-Mart III recorded in Volume 9560, Page 80 (D.P.R.B.C.T.), and in part with the north line of Lot 36 of said Toys "R" Us, S89°31'43"W, a distance of 2200.44 feet to the POINT OF BEGINNING and containing 66.9915 Acre (2,918,150 sq. ft.) of land, more or less.

"SAVE AND EXCEPT the Property described on Exhibit B-1 attached hereto and made a part hereof for all purposes"



Date: May 11, 2012, 4:01pm User ID: Chipenick
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THIS DOCUMENT HAS BEEN PRODUCED FROM MATERIAL THAT WAS STORED AND/OR TRANSMITTED ELECTRONICALLY AND MAY HAVE BEEN INADVERTENTLY ALTERED. RELY ONLY ON FINAL HARDCOPY MATERIALS BEARING THE CONSULTANT'S ORIGINAL SIGNATURE AND SEAL.

TERMINATION AND RELEASE AGREEMENT

STATE OF TEXAS §
§
COUNTY OF BEXAR §

This TERMINATION AND RELEASE AGREEMENT (this "**Release**") is entered into this _____ day of _____, 2012, by (i) GVD COMMERCIAL PROPERTIES, INC., a California corporation ("**GVD**"), (ii) MONTE MAC NO. 2, a California limited partnership ("**MM2**"), (iii) WINDCREST FIRESTONE, LLC, a Texas limited liability company ("**Firestone**"), (iv) ANTHON MINOR, LTD., a Texas limited partnership ("**Anthon Minor**"), (v) RACKSPACE US, INC., a Delaware corporation ("**Rackspace**"), and (vi) WINDCREST ECONOMIC DEVELOPMENT CORPORATION, a Section 4(b) corporation, on behalf of itself and the City of Windcrest, Texas (collectively, "**Windcrest**").

RECITALS

A. GVD is the Owner of certain real property in the City of Windcrest, Bexar County, Texas, more particularly described on **Exhibit A** attached hereto (the "**Olive Garden Parcel**").

B. MM2 is the Owner of certain real property in the City of Windcrest, Bexar County, Texas, more particularly described on **Exhibit B** attached hereto (the "**Benny's Parcel**"); MM2 is also the Owner of certain real property in the City of Windcrest, Bexar County, Texas, more particularly described on **Exhibit C** attached hereto (the "**Applebee's Parcel**").

C. Firestone is the Owner of certain real property in the City of Windcrest, Bexar County, Texas, more particularly described on **Exhibit D** attached hereto (the "**Firestone Parcel**").

C. Anthon Minor is the Owner of certain real property in the City of Windcrest, Bexar County, Texas, more particularly described on **Exhibit E** attached hereto (the "**Anthon Minor Parcel**") (the Olive Garden Parcel, Benny's Parcel, Applebee's Parcel, Firestone Parcel and Anthon Minor Parcel are each referred to herein as an "**Outparcel**" and collectively referred to herein as the "**Outparcels**").

D. The Outparcels are located adjacent to that certain property, formerly known as Windsor Park Mall, as more particularly described on **Exhibit F** attached hereto and made a part hereof for all purposes (the "**Former Mall Property**"). Windcrest is the Owner of the Former Mall Property and Rackspace is the ground lessee thereof.

E. The Outparcels and the Former Mall Property are subject to, encumbered by, and have certain rights, pursuant to that certain Easement and Operating Agreement, dated

September 10, 1974, recorded in Volume 7451, Page 649, in the Real Property Records of Bexar County, Texas (the "**Original REA**"); as amended, modified and partially released by: (i) that certain Modification of Easement and Operating Agreement, dated May 5, 1975, recorded in Volume 7693, Page 199, in the Real Property Records of Bexar County, Texas; (ii) that certain Second Amendment of Easement and Operating Agreement, dated April 15, 1977, recorded in Volume 8069, Page 704, in the Real Property Records of Bexar County, Texas; (iii) that certain Third Amendment of Easement and Operating Agreement, dated July 16, 1985, recorded in Volume 4820, Page 1829, in the Real Property Records of Bexar County, Texas; (iv) that certain Fourth Amendment of Easement and Operating Agreement, dated November 20, 1990, recorded in Volume 5004, Page 585, in the Real Property Records of Bexar County, Texas; and (v) that certain Partial Mutual Release and Modification of Easement and Operating Agreement, dated January 25, 2007, recorded in Volume 12689, Page 1166, in the Real Property Records of Bexar County, Texas (the "**Partial Release and Modification Agreement**") (the Original REA, the amendments thereto, and the Partial Release and Modification Agreement are collectively referred to herein as the "**REA**"), including, but not limited to, certain rights of cross-access between the Outparcels and the Former Mall Property, including but not limited to the Mall Loop Road (as defined in the Partial Release and Modification Agreement). The Outparcels and the Former Mall Property represent the entire property encumbered by the REA.

F. The Former Mall Property is being redeveloped, and, in connection with such redevelopment, Windcrest, as the Owner, and Rackspace, as the Occupant, of the Former Mall Property have requested and the Owners of the Outparcels have agreed to release and terminate the REA in its entirety, including but not limited to the Mall Loop Road.

G. As the Owners of the respective Outparcels, GVD, MM2, Firestone and Anthon Minor desires to terminate and release in its entirety the REA, including but not limited to the Mall Loop Road; and as the respective Owner and Occupant of the Former Mall Property, Windcrest and Rackspace desire to terminate and release in its entirety the REA, including but not limited to the Mall Loop Road.

NOW THEREFORE, for and in consideration of One and No/100 Dollar ($1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, the Owners of the respective Outparcels and the Owner and Occupant of the Former Mall Property hereby recite and agree as follows:

1. Recitals Incorporated; Exhibits Incorporated. The Recitals set forth above are hereby incorporated by this reference and shall be deemed terms and provisions hereof with the same force and effect as if fully set forth in this Section 1. All exhibits attached to this Release shall be deemed incorporated into this Release for all purposes hereunder.

2. Authority. GVD is the current Owner of the Olive Garden Parcel and is the successor-in-interest to the rights and obligations in the REA affecting and inuring to the benefit of the Olive Garden Parcel, and GVD has the authority to enter into this Release as to the Olive Garden Parcel, without the joinder of any other party, including without limitation, any Occupant, Permittee or mortgagee of the Olive Garden Parcel (except for the specific consents attached hereto and made a part hereof for all purposes).

MM2 is the current Owner of the Benny's Parcel and Applebee's Parcel and is the successor-in-interest to the rights and obligations in the REA affecting and inuring to the benefit of the Benny's Parcel and Applebee's Parcel, respectively, and MM2 has the authority to enter into this Release as to the Benny's Parcel and Applebee's Parcel, without the joinder of any other party, including without limitation, any Occupant, Permittee or mortgagee of the Benny's Parcel and Applebee's Parcel, respectively (except for the specific consents attached hereto and made a part hereof for all purposes).

Firestone is the current Owner of the Firestone Parcel and is the successor-in-interest to the rights and obligations in the REA affecting and inuring to the benefit of the Firestone Parcel, and Firestone has the authority to enter into this Release as to the Firestone Parcel, without the joinder of any other party, including without limitation, any Occupant, Permittee or mortgagee of the Firestone Parcel (except for the specific consents attached hereto and made a part hereof for all purposes).

Anthon Minor is the current Owner of the Anthon Minor Parcel and is the successor-in-interest to the rights and obligations in the REA affecting and inuring to the benefit of the Anthon Minor Parcel, and Anthon Minor has the authority to enter into this Release as to the Anthon Minor Parcel, without the joinder of any other party, including without limitation, any Occupant, Permittee or mortgagee of the Anthon Minor Parcel (except for the specific consents attached hereto and made a part hereof for all purposes).

Windcrest is the current Owner of the Former Mall Property and is the successor-in-interest to the rights and obligations in the REA affecting and inuring to the benefit of the Former Mall Property, and Windcrest has the authority to enter into this Release as to the Former Mall Property, without the joinder of any other party, including without limitation, any Occupant, Permittee or mortgagee of the Former Mall Property (except for the specific consent of Rackspace as the ground lessee thereof attached hereto and made a part hereof for all purposes).

3. Termination and Release. The Owners of the respective Outparcels and the Owner and Occupant of the Former Mall Property do hereby terminate and release in its entirety the REA, including but not limited to the Mall Loop Road, and including without limitation, all obligations and/or liabilities pertaining to the REA that may have accrued prior to the date of this Release. From and after the date hereof, the REA shall be deemed null and void and of no further force or effect, including but not limited to any terms, provisions and conditions related to the Mall Loop Road.

4. Defined Terms. For purposes of this Release, (i) the term "**Owner**" shall mean the record, fee simple owner of all or any portion of the respective parcels; (ii) the term "**Occupant**" shall mean any individual, partnership, firm, association, corporation, limited liability company, trust, governmental agency, administrative tribunal or any other form of business or legal entity, from time to time, entitled to the use and occupancy of all or any portion of the respective parcels, as Owner or under any ground lease, lease, sublease, license, concession or other similar agreement as to the respective parcels; and (iii) the term "**Permittee**" shall mean the officers, directors, employees, agents, contractors, customers, vendors, suppliers,

visitors, invitees and licensees of any Owner or Occupants insofar as their activities relate to the intended use of the respective parcels.

5. Runs With the Land; Binding Effect; Capitalized Terms. From and after the date hereof, this Release shall run with the land and shall (i) be binding upon and inure to the benefit of the Owners, Occupants and Permittees of the respective Outparcels (and their respective successors and assigns) and the Owners, Occupants and Permittees of the Former Mall Property (and their respective successors and assigns). All capitalized terms used herein but not otherwise defined herein shall have the meanings ascribed to such terms in the REA.

[Signature Pages Follow]

EXECUTED to be effective the date first written above.

GVD COMMERCIAL PROPERTIES, INC.,
a California corporation

By: _____
David A. Case, CFO

STATE OF CALIFORNIA) SS
COUNTY OF ORANGE)

On _____, 2012, before me, _____ (Notary Public) personally appeared David A. Case, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

MONTE MAC NO. 2,
a California limited partnership

By: GVD Investments, Inc.,
a California corporation,
its General Partner

By: _____
David A. Case, CFO

STATE OF CALIFORNIA) SS
COUNTY OF ORANGE)

On _____, 2012, before me, _____ (Notary Public) personally appeared David A. Case, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

WINDCREST FIRESTONE, LLC,
a Texas limited liability company

By: _____
Name: _____
Title: _____

STATE OF _____ §
§
COUNTY OF _____ §

This instrument was acknowledged before me the ___ day of _____, 2012, by _____, the _____ of Windcrest Firestone, LLC, a Texas limited liability company, on behalf of said limited liability company.

_____
Notary Public, in and for
The State of _____

ANTHON MINOR, LTD.,
a Texas limited partnership

By: Anthon Minor, G.P., LLC,
a Texas limited liability company,
its General Partner

By: _____
Name: _____
Title: _____

STATE OF _____ §
§
COUNTY OF _____ §

This instrument was acknowledged before me the ___ day of _____, 2012, by _____, the _____ of Anthon Minor, G.P., LLC, a Texas limited liability company, the General Partner of Anthon Minor, Ltd., a Texas limited partnership, on behalf of said limited liability company and said limited partnership.

_____
Notary Public, in and for
The State of _____

RACKSPACE US, INC.,
a Delaware corporation

By: _____
Name: _____
Title: _____

THE STATE OF _____ §
§
COUNTY OF _____ §

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, the _____ of Rackspace US, Inc., a Delaware corporation, on behalf of said corporation.

_____
Notary Public in and for
The State of _____

WINDCREST ECONOMIC DEVELOPMENT CORPORATION

By: _____
Name: _____
Title: _____

THE STATE OF _____ §
§
COUNTY OF _____ §

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, the _____ of Windcrest Economic Development Corporation, on behalf of said corporation.

_____
Notary Public in and for
THE STATE OF _____

Joinder of Mortgagee
[Anthon Minor Parcel]

The Wells Fargo Bank, NA ("Lienholder"), is the owner and holder of indebtedness that is secured in whole or in part by liens and security interests (the "Liens") that encumber the Anthon Minor Parcel. Lienholder, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agrees to and does hereby consent to this Release.

LIENHOLDER:

Wells Fargo Bank, NA

By: _____
Name: _____
Title: _____

THE STATE OF TEXAS §
§
COUNTY OF BEXAR §

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, the _____ of Wells Fargo Bank, NA, a national banking association, on behalf of said national banking association.

_____
Notary Public in and for
The State of Texas

Joinder of Tenant
[Anthon Minor Parcel]

H & L Imports, Inc, a Texas corporation ("Tenant") is the tenant of the Anthon Minor Parcel, pursuant to that certain Lease Agreement between Anthon Minor and Tenant, as amended from time to time. Tenant joins in the execution of this Release as the current tenant of the Anthon Minor Parcel and agrees to and does hereby consent to this Release.

TENANT:

H & L Imports, Inc.,
a Texas corporation

By: _____
Name: Man Hung Li
Title: President

THE STATE OF TEXAS §
§
COUNTY OF BEXAR §

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by Man Hung Li, the President of H & L Imports, Inc., a Texas corporation, on behalf of said corporation.

_____
Notary Public in and for
The State of Texas

Joinder of Tenant
[Applebee's Parcel]

NEIGHBORHOOD RESTAURANT PARTNERS, LLC, a Delaware limited liability company ("Applebee's Tenant") is the tenant of the Applebee's Parcel, pursuant to that certain Lease Agreement between MM2 and Applebee's Tenant, as amended from time to time. Applebee's Tenant joins in the execution of this Release as the current tenant of the Applebee's Parcel and agrees to and does hereby consent to this Release.

APPLEBEE'S TENANT:

NEIGHBORHOOD RESTAURANT PARTNERS, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

THE STATE OF _____ §
§
COUNTY OF _____ §

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, the _____ of **NEIGHBORHOOD RESTAURANT PARTNERS, LLC, a Delaware limited liability company**, on behalf of said limited liability company.

_____
Notary Public in and for
THE STATE OF _____

Joinder of Tenant
[Olive Garden Parcel]

DARDEN SW, LLC, a Florida limited liability company ("Olive Garden Tenant") is the tenant of the Olive Garden Parcel, pursuant to that certain Lease Agreement between GVD and Olive Garden Tenant, as amended from time to time. Olive Garden Tenant joins in the execution of this Release as the current tenant of the Olive Garden Parcel and agrees to and does hereby consent to this Release.

OLIVE GARDEN TENANT:

DARDEN SW, LLC,
a Florida limited liability company

By: GMRI, Inc.,
Its Manager

By: _____
Name: _____
Title: _____

THE STATE OF _____ §
§
COUNTY OF _____ §

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, the _____ of **GMRI, Inc., the Manager of Darden SW, LLC, a Florida limited liability company**, on behalf of said corporation and limited liability company.

_____
Notary Public in and for
THE STATE OF _____

Exhibit A
Olive Garden Parcel

Lot 46, NCB12190 Simon Apple Garden Subdivision, an Addition to the City of San Antonio, Bexar County, Texas, according to the map or plat thereof recorded in Volume 9551, Page 187-88, in the Deed and Plat Records of Bexar County, Texas.

Exhibit B
Benny's Parcel

Lot 39, NCB12190, Simon Subdivision, an Addition to the City of San Antonio, Bexar County, Texas, according to the map or plat thereof recorded in Volume 9522, Page 107-108, in the Deed and Plat Records of Bexar County, Texas.

Exhibit C
Applebee's Parcel

Lot 45, NCB12190 Simon Apple Garden Subdivision, an Addition to the City of San Antonio, Bexar County, Texas, according to the map or plat thereof recorded in Volume 9551, Page 187-88, in the Deed and Plat Records of Bexar County, Texas.

EXHIBIT D

DESCRIPTION OF A TRACT OF LAND CONTAINING 1.8079 ACRE (78,758 SQUARE FEET) BEING PARTIALLY OUT OF LOT 25 OF THE AMENDING PLAT OF A PORTION OF SIMON SUBDIVISION RECORDED IN VOLUME 9522, PAGE 105-106; OF THE DEED AND PLAT RECORDS OF BEXAR COUNTY, TEXAS (D.P.R.B.C.T.), AND BEING PARTIALLY OUT OF LOT 44 OF THE REPLAT ESTABLISHING SIMON APPLE GARDEN, RECORDED IN VOLUME 9551, PAGE 187 (D.P.R.B.C.T.), SAID 1.8079 ACRE (78,758 SQUARE FEET) OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS, (ALL BEARINGS ARE BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, GRID NORTH, SOUTH CENTRAL ZONE (4204), ALL DISTANCES WERE ADJUSTED TO SURFACE USING A COMBINED SCALE FACTOR OF 1.0001644100065):

BEGINNING at a PK nail found in concrete in the south right of way line of FM 1976 (Walzem Road), (R.o.w. Varies), also being the most northerly northwest corner of Lot 44 of said Simon Apple Garden, and being the northeast corner of Lot 25 of said Simon Subdivision, for a point on line and **POINT OF BEGINNING** hereof, from which a PK Nail found at an angle point in the common line of said Lot 25 and Lot 44, bears S00°18'27"E, a distance of 149.55 feet;

THENCE, with the north line of said Lot 44, and the south right of way line of said Walzem Road, S88°27'18"E, a distance of 121.72 feet to an "X" cut found in concrete for an angle point hereof, said point being an angle point in the north line of said Lot 44 and being an angle point in the south right of way line of said Walzem Road, from which a Brass Disk Row Monument found bears, S89°26'24"W, a distance of 1.06 feet;

THENCE, continuing with the north line of said Lot 44, and the south right of way line of said Walzem Road, N89°44'36"E, a distance of 38.20 feet to a PK Nail found for the northeast corner hereof, said point being the most northerly northeast corner of said Lot 44, and being the northwest corner of Lot 38 of the Replat of Simon Subdivision recorded in Volume 9522, Page 107-108

(D.P.R.B.C.T.), from which a PK nail found at an angle point in the common line between said Lot 44 and Lot 38 bears, S00°14'22"E, a distance of 64.24 feet;

THENCE, leaving the south right of way line of said Walzem Road, and crossing through Lot 38 of said Replat of Simon Subdivision, S16°51'51"E, a distance of 69.10 feet to a mag nail with "Doucet" washer set for the southeast corner hereof, said point is also a point of curvature of the herein described tract, and being a point on the west line of a proposed right of way of Mall Loop Road, not currently dedicated as right of way;

THENCE, continuing through said Lot 38, and in part across said Lot 44, along the north line of said Mall Loop Road, along a curve to the left, whose radius is 500.00 feet, whose delta is 11°52'41", at an arc length of 100.22 feet crossing the common line between said Lot 38 and 44, for an overall arc length of 103.66 feet, and overall chord which bears S60°17'16"W, a distance of 103.47 feet to a 1/2" iron rod with "Doucet" cap set for a point of reverse curvature hereof, said point lies within said Lot 44;

THENCE, continuing though said Lot 44, and in part across Lot 25 of said Simon Subdivision, and continuing along the north line of said Mall Loop Road, along a curve to the right, whose radius is 500.00 feet, whose delta is 10°19'44", at an arc length of 75.37 feet crossing the common line between said Lot 44 and 25, for an overall arc length of 90.14 feet, and overall chord which bears S59°30'47"W, a distance of 90.02 feet to a Mag Nail with "Doucet" washer set for a point of compound curvature hereof, said point lies within said Lot 25;

THENCE, continuing through said Lot 25, and along the north line of said Mall Loop Road, the following three (3) courses and distances

1) Along a curve to the right, whose radius is 2010.40 feet, whose delta is 03°54'26", whose arc length is 137.10 feet, and whose chord bears S66°37'52"W, a distance of 137.07 feet to a Mag Nail with "Doucet" washer set for a point of compound curvature hereof;
2) Along a curve to the right, whose radius is 750.00 feet, whose delta is 09°26'18", whose arc length is 123.55 feet, and whose chord bears S73°18'14"W, a distance of 123.44 feet to a Mag Nail with "Doucet" washer set for a point of reverse curvature hereof;
3) Along a curve to the left, whose radius is 921.48 feet, whose delta is 01°33'47", whose arc length is 25.14 feet, and whose chord bears S77°14'29"W, a distance of 25.14 feet to a Mag Nail with "Doucet" washer set for the southwest corner hereof, said point is also an interior ell corner of said Mall Loop Road;

THENCE, continuing through said Lot 25, along an east line of said Mall Loop Road, N00°17'20W, a distance of 268.51 feet to a mag nail with "Doucet" washer set for the northwest corner hereof, said point is also in the north line of said Lot 25, and being a point in the south right of way line of said Walzem Road;

THENCE, with the north line of said Lot 25, and the south right of way line of said Walzem Road, S88°27'18"E, a distance of 257.50 feet to the **POINT OF BEGINNING** and containing 1.8079 Acre (78,758 sq. ft.) of land, more or less.

6-6-07

Date

Jason Ward, R.P.L.S.
Texas Registration No. 5811
Doucet & Associates Inc.,
7401 B Hwy. 71 West
Suite 160
Austin, Texas 78735

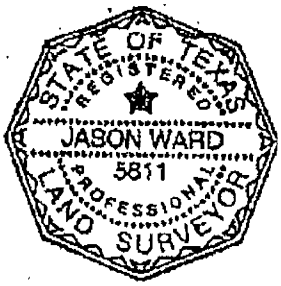


EXHIBIT E

BEING 2.6424 ACRES (115,104 SQUARE FEET) OF LAND OUT OF LOT 24, NEW CITY BLOCK 1290, SIMON SUBDIVISION, IN THE CITY SAN ANTONIO, BEXAR COUNTY, TEXAS, ACCORDING TO PLAT THEREOF RECORDED IN VOLUME 7800, PAGE 9 THROUGH 13, INCLUSIVE, DEED AND PLAT RECORDS OF BEXAR COUNTY, TEXAS. SAID 2.6424 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED IN METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A FOUND CAPPED ½ INCH IRON ROD FOUND FOR THE COMMON WESTERLY CORNER OF LOTS 24 AND 26 IN THE EASTERLY LINE OF INTERSTATE HIGHWAY 35 (LOOP 410) (300 FEET WIDE);

THENCE NORTH 10 DEGREES 11 MINUTES 06 SECONDS EAST, ALONG SAID EASTERLY LINE OF INTERSTATE HIGHWAY 35 (LOOP 410) A DISTANCE OF 337.40 FEET TO A 5/8 INCH IRON ROD SET FOR THE NORTHWESTERLY CORNER;

THENCE NORTH 80 DEGREES 30 MINUTES 17 SECONDS EAST, A DISTANCE OF 311.52 FEET TO A P.K. NAIL SET FOR CORNER;

THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS WEST, A DISTANCE OF 327.26 FEET TO A P.K. NAIL SET FOR THE SOUTHEAST CORNER ;

THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST, A DISTANCE OF 103.15 FEET TO A 5/8 INCH IRON ROD FOUND FOR AN ANGLE POINT;

THENCE NORTH 79 DEGREES 48 MINUTES 00 SECONDS WEST, ALONG THE COMMON LINE OF LOT 24 AND 26, A DISTANCE OF 263.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 2.6424 ACRES (115,104 SQUARE FEET) OF LAND.

EXHIBIT F

BEGINNING at a 3/4" iron rod found in the east line of Interstate Highway (IH) 35/ Loop 410 (R.O.W. Varies), also being the southwest corner of said Lot 44, and being the northwest corner of Lot 36, of the Replat of Toys "R" Us Subdivision, recorded in Volume 9520, Page 187, (D.P.R.B.C.T.), for the southwest corner and POINT OF BEGINNING hereof, from which a 4" Texas Department of Transportation (TXDOT) brass disk monument found in the east line of said IH 35/ Loop 410 at station 1882+00 and offset right 213.20', bears S09°56'18"W, a distance of 454.36 feet;

THENCE, with the east line of said IH 35/ Loop 410, same being the west line of said Lot 44, N09°56'18"E, a distance of 437.50 feet to 1/2-inch iron rod found for an angle point hereof, same being the southwest corner of Lot 45 of said Replat Establishing Simon Apple Garden;

THENCE, leaving the east line of said IH 35/ Loop 410, same being the west line of said Lot 44, with the common line between said Lots 44 and 45, the following five (5) courses and distances:

1) S80°21'18"E, a distance of 217.15 feet to a PK nail found for an angle point hereof, same being the southeast corner of said Lot 45, and a southeast corner of said Lot 44;
2) N10°05'00"E, a distance of 147.36 feet to a 1/2-inch iron rod found for an angle point hereof, same being a northeast corner for said Lot 45, also being an angle point for said Lot 44;
3) N80°16'37"W, a distance of 22.47 feet to a 1/2-inch iron rod found for an angle point hereof, same being an angle point for said Lots 44 and 45;
4) N09°43'58"E, a distance of 9.05 feet to a 1/2-inch iron rod found for an angle point hereof, same being a northeast corner for said Lot 45, also being an angle point for said Lot 44;
5) N80°08'26"W, a distance of 195.02 feet to a 1/2-inch iron rod found for an angle point hereof, same being the northwest corner of said Lot 45, also being an angle point of said Lot 44, same being a point in the east line of said IH 35/ Loop 410;

THENCE, with the east line of said IH 35/ Loop 410, same being the west line of said Lot 44, N09°56'18"E, a distance of 64.23 feet to a 1/2-inch iron rod with "Vickery" cap found for an angle point hereof, same being the southwest corner of Lot 46 of said Replat Establishing Simon Apple Garden, also being an angle point for said Lot 44;

THENCE, leaving the east line of said IH35/ Loop 410, same being the west line of said Lot 44, with the common line between said Lots 44 and 46, S80°07'28"E, a distance of 225.13 feet to a 1/2-inch iron found for an angle point hereof, same being the southeast corner of said Lot 46, also being an angle point for said Lot 44;

THENCE, continuing with the common line between said Lots 44 and 46, N09°56'34"E, a distance of 230.05 feet a 1/2-inch iron rod found for an angle point hereof, same being the northeast corner of said Lot 46, same being an angle point for said Lot 44;

THENCE, crossing through said Lot 24, S80°02'51"E, a distance of 37.96 feet to a PK nail found for an angle point hereof, same being an angle point for said 11.5384 acre tract, also being an angle point for said Lot 44;

THENCE, continuing through said Lot 24, with a north line of said 11.5384 acre tract, N89°45'32"E, a distance of 103.11 feet to a PK nail found for an angle point hereof, same being an angle point of said 11.5384 acre tract, said point lies within said Lot 24;

THENCE, continuing through said Lot 24, with a west line of said 11.5384 acre tract, N00°36'38"E, a distance of 327.41 feet to a PK nail found for an angle point hereof, same being an angle point of said 11.5384 acre tract, said point lies within said Lot 24;

THENCE, continuing through said Lot 24, with a south line of said 11.5384 acre tract, N80°48'25"W, a distance of 311.55 feet to a PK nail found for an angle point hereof, same being an angle point of said 11.5384 acre tract, and being a point in the west line of said Lot 24, also being a point in the east line of said IH35/ Loop 410;

THENCE, with the west line of said Lot 24, same being the east line of said IH 35/ Loop 410, N09°56'18"E, a distance of 54.60 feet to a 1/2-inch iron rod with "Doucet & Assoc," cap set for a northwest corner hereof, same being a northwest corner of said Lot 24, and the southwest corner of Lot 22 of the Simon Subdivision recorded in Volume 7300, Page 69, (D.P.R.B.C.T.);

THENCE, with the south line of said Lot 22, and the north line of said Lot 24, N85°26'50"E, a distance of 381.62 feet to a PK nail with "Brown" shiner found for a point of curvature (P.C.) hereof, same being a P.C. for said Lot 22, also being a northwest corner and P.C. of said Lot 25;

THENCE, continuing with the southeast line of said Lot 22, and with the northwest line of said Lot 25, along a curve to the left, whose radius is 159.75 feet, whose delta is 85°23'33", at an arc length of 238.09 feet, and overall chord which bears N42°47'06"E, a distance 216.66 feet to a 1/2-inch iron rod with

"Vickery" aluminum cap found for a point of tangency (P.T.) hereof, same being a P.T. for said Lots 22 and 25;

THENCE, continuing with the west line of said Lot 22, and the east line of said Lot 25, N00°05'45"E, a distance of 249.80 to a 1/2-inch iron rod with "Vickery" cap found for a northwest corner hereof, same being a northwest corner of said Lot 25, and a northeast corner of said Lot 22, same being a point in the south line of Walzem Road/ Farm to Market (FM) 1976 (R.O.W. Varies);

THENCE, with the south line of said Walzem Road/ FM 1976, and the north line of said Lot 25, N89°47'19"E, a distance of 112.39 feet to a Mag nail with "Brown" shiner found for an angle point hereof, same being an angle point for said Lot 25, also being an angle point for said Walzem Road/ FM 1976, from which a 4" Texas Department of Transportation (TXDOT) brass disk monument found bears, S76°06'59"W, a distance of 1.29 feet;

THENCE, continuing with the south line of said Walzem Road/ FM 1976, and the north line of said Lot 25, S88°27'18"E, a distance of 120.88 feet to a Mag nail with "Doucet" washer set for an angle point hereof;

THENCE, leaving the south line of said Walzem Road/ FM 1976, same being the north line of said Lot 25, passing through said Lot 25 the next four (4) courses and distances:

1) S00°17'20"E, distance of 268.51 feet to a Mag nail with "Doucet" washer set for an angle point hereof;
2) Along a curve to the right, whose radius is 921.48 feet, whose delta is 01°33'47"", whose arc length is 25.14 feet, and whose chord bears N77°14'29"E, a distance of 25.14 feet to a Mag nail with "Doucet" washer set for a point of reverse curvature (P.R.C.) hereof;

3) Along a curve to the left, whose radius is 750.00 feet, whose delta is 09°26'18", whose arc length is 123.55 feet, and whose chord bears N73°18'14"E, a distance of 123.41 feet to a Mag nail with "Doucet" washer set for a point of compound curvature (P.C.C.) hereof;
4) Along a curve to the left, whose radius is 2010.40 feet, whose delta is 03°54'26", whose arc length is 137.10' feet, and whose chord bears N66°37'52"E, a distance of 137.07 feet to a Mag nail with "Doucet" washer set for a point of compound curvature (P.C.C.) hereof;

THENCE, continuing through said Lot 25, and in part through said Lot 44, along a curve to the left, whose radius is 500.00 feet, whose delta is 10°19'44", at an arc length of 14.77 feet passing the common line between said Lots 25 and 44, for an overall arc length of 90.14 feet, and whose overall chord bears N59°30'47"E, a distance of 90.02 feet to a Mag nail with "Doucet" washer set for a P.R.C. hereof, said point lies within said Lot 44;

THENCE, continuing in part through said Lot 44, and through said Lot 38, along a curve to the right, whose radius is 500.00 feet, whose delta is 11°52'41", at an arc length of 3.44 feet passing the common line between said Lots 44 and 38, for an overall arc length of 103.66 feet, and whose overall chord bears N60°17'16"E, a distance of 103.47 feet to a Mag nail with "Doucet" washer set for a P.T. hereof, said point lies in said Lot 38;

THENCE, continuing through said Lot 38, N16°51'51"W, a distance of 69.10 feet to a PK nail with "Brown" shiner found for an angle point hereof, same being a point in the south line of said Walzem Road/ FM 1976, also being the northern most northwest corner of said Lot 38, and the northeast corner of said Lot 44;

THENCE, with the south line of said Walzem Road/ FM 1976, same being the north line of said Lot 38, N89°44'36"E, a distance of 592.04 feet to a 1/2-inch iron rod with "Vickery" aluminum cap found for an angle point hereof, same being an angle point in the south line of said Walzem Road/ FM 1976, and an angle point in the north line of said Lot 38;

THENCE, continuing with the south line of said Walzem Road/ FM 1976, same being the north line of said Lot 38, N88°28'52"E, a distance of 17.99 feet to a "X" cut in concrete for the northern most northeast corner hereof, same being the northern most northeast corner of said Lot 38, also being the northwest corner of Lot 39 of said Replat of Subdivision Plat of Simon Subdivision;

THENCE, leaving the south line of said Walzem Road/ FM 1976, with the common line between said Lots 38 and 39 the following four (4) courses and distances:

1) S00°16'05"E, a distance of 151.24 feet to a 1/2-inch iron rod with "Vickery" aluminum cap found for an angle point hereof, same being the southwest corner of said Lot 39, and an angle point for said Lot 38;
2) N89°45'07"E, a distance of 131.79 feet to a 1/2-inch iron rod found for an angle point hereof, same being a southeast corner of said Lot 39, also being an angle point for said Lot 38;
3) N00°14'38"W, a distance of 18.06 feet to a 1/2-inch iron rod with "Vickery" cap found for an angle point hereof, same being an angle point for said Lots 38 and 39;

4) N89°37'31"E, a distance of 27.57 feet to a PK nail found for the eastern most northeast corner hereof, same being the eastern most southeast corner for said Lot 39, and the eastern most northeast corner of said Lot 38, also being a point in the west line of Lot 2, Block 1 of the Replat and Subdivision Plat Establishing Roosevelt High School Subdivision recorded in Volume 9566, Page 132, (D.P.R.B.C.T.);

THENCE, in part with the east line of Lot 38 and in part with the east line of Lot 37, both of said Replat of Simon Subdivision, and with the west line of Lot 2 of said Roosevelt High School, S00°13'42"E, at a distance of 685.73 feet passing the northeast corner of Lot 37, and being the southeast corner of Lot 38, for a total distance of 1379.71 feet to a PK Nail with "Brown" washer found for an interior ell corner hereof, said point is also an interior ell corner of said Lot 37, and being the southwest corner of said Lot 2;

THENCE, with a north line of said Lot 37, and in part with the south line of said Lot 2, N89°35'15"E, a distance of 63.93 feet to a PK with Shiner found for an exterior ell corner hereof, said point is also an exterior ell corner of said Lot 37;

THENCE, in part with an east line of said Lot 37, and in part with an east line of Lot 44 of said Replat Establishing Simon Apple Garden, S00°31'25"E, a distance of 145.30 feet to a 1/2" iron rod found for a southeast corner hereof, said point is also a southeast corner of said Lot 44 and being the northwest corner of Lot 12, Block 10 of Camelot Subdivision Unit 7, recorded in Volume 6500, Page 144 (D.P.R.B.C.T.), and being a point in the east line of a 40' City Public Service Board Easement as shown on said plat,

THENCE, with the south line of said Lot 44, and the north line of said 40' City Service Board Easement, S89°43'01"W, a distance of 39.73 feet to a 1/2" iron rod found for an interior ell corner hereof, said point is also a point on the west line of said 40' City Public Service Board Easement, and being an interior ell corner of said Lot 44;

THENCE, with the west line of said 40' City Public Service Board Easement, and a west line of said Lot 44, S00°56'32"W, a distance of 15.88 feet to a 1/2" iron rod found for an exterior ell corner hereof, said point is also an exterior ell corner of said Lot 44, and being the northeast corner of Lot 13 of said Camelot Subdivision;

THENCE, in part with the north line of Lots 13-26, Block "D" of said Camelot Subdivision, and in part with the north line of Lot 9, Block "B", of Camelot Subdivision Unit 5A, recorded in Volume 6500, Page 16 (D.P.R.B.C.T.), and in part with the north line of Lot 49 of Windsor Square Wal-Mart III recorded in Volume 9560, Page 80 (D.P.R.B.C.T.), and in part with the north line of Lot 36 of said Toys "R" Us, S89°31'43"W, a distance of 2200.44 feet to the POINT OF BEGINNING and containing 66.9915 Acre (2,918,150 sq. ft.) of land, more or less.

TERMINATION AND RELEASE AGREEMENT

STATE OF TEXAS §
§
COUNTY OF BEXAR §

This TERMINATION AND RELEASE AGREEMENT (this "**Release**") is entered into this _____ day of _____, 2012, by GVD COMMERCIAL PROPERTIES, INC., a California corporation ("**GVD**"), MONTE MAC NO. 2, a California limited partnership ("**MM2**"), RACKSPACE US, INC., a Delaware corporation ("**Rackspace**") and WINDCREST ECONOMIC DEVELOPMENT CORPORATION, a Section 4(b) corporation on behalf of itself and the City of Windcrest, Texas ("**Windcrest**").

RECITALS

A. GVD is the Owner of certain real property in the City of Windcrest, Bexar County, Texas, more particularly described on **Exhibit A** attached hereto (the "**Olive Garden Parcel**").

B. MM2 is the Owner of certain real property in the City of Windcrest, Bexar County, Texas, more particularly described on **Exhibit B** attached hereto (the "**Benny's Parcel**"); MM2 is also the Owner of certain real property in the City of Windcrest, Bexar County, Texas, more particularly described on **Exhibit C** attached hereto (the "**Applebee's Parcel**")(the Olive Garden Parcel, Benny's Parcel and Applebee's Parcel are each referred to herein as an "**Outparcel**" and collectively referred to herein as the "**Outparcels**").

C. The Outparcels are located adjacent to that certain property, formerly known as Windsor Park Mall, as more particularly described on **Exhibit D** attached hereto and made a part hereof for all purposes (the "**Former Mall Property**"). Windcrest is the Owner of the Former Mall Property and Rackspace is the ground lessee thereof.

D. The Outparcels and Former Mall Property are subject to, encumbered by, and have certain rights, pursuant to that certain Covenants, Conditions and Restrictions Agreement, dated November 1, 2000, recorded in Volume 8630, Page 1609, in the Real Property Records of Bexar County, Texas (the "**CCR Agreement**"), including, but not limited to, certain rights of cross-access between the Outparcels and the Former Mall Property. The Outparcels and the Former Mall Property represent the entire property encumbered by the CCR Agreement.

E. The Former Mall Property is being redeveloped, and, in connection with such redevelopment, Windcrest, as the Owner, and Rackspace, as the Occupant, of the Former Mall Property have requested and the Owners of the Outparcels have agreed to release and terminate the CCR Agreement in its entirety.

F. As the Owners of the respective Outparcels, GVD and MM2 desires to terminate and release in its entirety the CCR Agreement; and as the respective Owner and Occupant of the Former Mall Property, Windcrest and Rackspace desire to terminate and release in its entirety the CCR Agreement.

NOW THEREFORE, for and in consideration of One and No/100 Dollar ($1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, the Owners of the respective Outparcels and the Owner and Occupant of the Former Mall Property hereby recite and agree as follows:

1. Recitals Incorporated; Exhibits Incorporated. The Recitals set forth above are hereby incorporated by this reference and shall be deemed terms and provisions hereof with the same force and effect as if fully set forth in this Section 1. All exhibits attached to this Release shall be deemed incorporated into this Release for all purposes hereunder.

2. Authority. GVD is the current Owner of the Olive Garden Parcel and is the successor-in-interest to the rights and obligations in the CCR Agreement affecting and inuring to the benefit of the Olive Garden Parcel, and GVD has the authority to enter into this Release as to the Olive Garden Parcel, without the joinder of any other party, including without limitation, any Occupant, Permittee or mortgagee of the Olive Garden Parcel (except for the specific consents attached hereto and made a part hereof for all purposes).

MM2 is the current Owner of the Benny's Parcel and Applebee's Parcel and is the successor-in-interest to the rights and obligations in the CCR Agreement affecting and inuring to the benefit of the Benny's Parcel and Applebee's Parcel, respectively, and MM2 has the authority to enter into this Release as to the Benny's Parcel and Applebee's Parcel, without the joinder of any other party, including without limitation, any Occupant, Permittee or mortgagee of the Benny's Parcel and Applebee's Parcel, respectively (except for the specific consents attached hereto and made a part hereof for all purposes).

Windcrest is the current Owner of the Former Mall Property and is the successor-in-interest to the rights and obligations in the CCR Agreement affecting and inuring to the benefit of the Former Mall Property, and Windcrest has the authority to enter into this Release as to the Former Mall Property, without the joinder of any other party, including without limitation, any Occupant, Permittee or mortgagee of the Former Mall Property (except for the specific consent of Rackspace as the ground lessee thereof attached hereto and made a part hereof for all purposes).

3. Termination and Release. The Owners of the respective Outparcels and the Owner and Occupant of the Former Mall Property do hereby terminate and release in its entirety the CCR Agreement, including without limitation, all obligations and/or liabilities pertaining to the CCR Agreement that may have accrued prior to the date of this Release. From and after the date hereof, the CCR Agreement shall be deemed null and void and of no further force or effect.

4. Defined Terms. For purposes of this Release, (i) the term "**Owner**" shall mean the record, fee simple owner of all or any portion of the respective parcels; (ii) the term "**Occupant**"

shall mean any individual, partnership, firm, association, corporation, limited liability company, trust, governmental agency, administrative tribunal or any other form of business or legal entity, from time to time, entitled to the use and occupancy of all or any portion of the respective parcels, as Owner or under any ground lease, lease, sublease, license, concession or other similar agreement as to the respective parcels; and (iii) the term "**Permittee**" shall mean the officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees and licensees of any Owner or Occupants insofar as their activities relate to the intended use of the respective parcels.

5. Runs With the Land; Binding Effect; Capitalized Terms. From and after the date hereof, this Release shall run with the land and shall (i) be binding upon and inure to the benefit of the Owners, Occupants and Permittees of the respective Outparcels (and their respective successors and assigns) and the Owners, Occupants and Permittees of the Former Mall Property (and their respective successors and assigns). All capitalized terms used herein but not otherwise defined herein shall have the meanings ascribed to such terms in the CCR Agreement, as applicable.

[Signature Pages Follow]

EXECUTED to be effective the date first written above.

GVD COMMERCIAL PROPERTIES, INC.
a California corporation

By: _____
David A. Case, CFO

STATE OF CALIFORNIA) SS
COUNTY OF ORANGE)

On _____, 2012, before me, _____ (Notary Public) personally appeared David A. Case, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

MONTE MAC NO. 2,
a California limited partnership

By: GVD Investments, Inc.,
a California corporation,
its General Partner

By: _____
David A. Case, CFO

STATE OF CALIFORNIA) SS
COUNTY OF ORANGE)

On _____, 2012, before me, _____ (Notary Public) personally appeared David A. Case, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

RACKSPACE US, INC.,
a Delaware corporation

By: _____
Name: _____
Title: _____

THE STATE OF _____ §
§
COUNTY OF _____ §

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, the _____ of Rackspace US, Inc., a Delaware corporation, on behalf of said corporation.

_____
Notary Public in and for
The State of _____

WINDCREST ECONOMIC DEVELOPMENT CORPORATION

By: _____
Name: _____
Title: _____

THE STATE OF _____ §
§
COUNTY OF _____ §

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, the _____ of Windcrest Economic Development Corporation, on behalf of said corporation.

_____
Notary Public in and for
THE STATE OF _____

Joinder of Tenant
[Applebee's Parcel]

NEIGHBORHOOD RESTAURANT PARTNERS, LLC, a Delaware limited liability company ("Applebee's Tenant") is the tenant of the Applebee's Parcel, pursuant to that certain Lease Agreement between MM2 and Applebee's Tenant, as amended from time to time. Applebee's Tenant joins in the execution of this Release as the current tenant of the Applebee's Parcel and agrees to and does hereby consent to this Release.

APPLEBEE'S TENANT:

NEIGHBORHOOD RESTAURANT PARTNERS, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

THE STATE OF _____ §
§
COUNTY OF _____ §

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, the _____ of **NEIGHBORHOOD RESTAURANT PARTNERS, LLC, a Delaware limited liability company**, on behalf of said limited liability company.

_____
Notary Public in and for
THE STATE OF _____

Joinder of Tenant
[Olive Garden Parcel]

DARDEN SW, LLC, a Florida limited liability company ("Olive Garden Tenant") is the tenant of the Olive Garden Parcel, pursuant to that certain Lease Agreement between GVD and Olive Garden Tenant, as amended from time to time. Olive Garden Tenant joins in the execution of this Release as the current tenant of the Olive Garden Parcel and agrees to and does hereby consent to this Release.

OLIVE GARDEN TENANT:

DARDEN SW, LLC,
a Florida limited liability company

By: GMRI, Inc.,
Its Manager

By: _____
Name: _____
Title: _____

THE STATE OF _____ §
§
COUNTY OF _____ §

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, the _____ of **GMRI, Inc., the Manager of Darden SW, LLC, a Florida limited liability company**, on behalf of said corporation and limited liability company.

_____
Notary Public in and for
THE STATE OF _____

Exhibit A
Olive Garden Parcel

Lot 46, NCB12190 Simon Apple Garden Subdivision, an Addition to the City of San Antonio, Bexar County, Texas, according to the map or plat thereof recorded in Volume 9551, Page 187-88, in the Deed and Plat Records of Bexar County, Texas.

Exhibit B
Benny's Parcel

Lot 39, NCB12190, Simon Subdivision, an Addition to the City of San Antonio, Bexar County, Texas, according to the map or plat thereof recorded in Volume 9522, Page 107-108, in the Deed and Plat Records of Bexar County, Texas.

Exhibit C
Applebee's Parcel

Lot 45, NCB12190 Simon Apple Garden Subdivision, an Addition to the City of San Antonio, Bexar County, Texas, according to the map or plat thereof recorded in Volume 9551, Page 187-88, in the Deed and Plat Records of Bexar County, Texas.

EXHIBIT "D"

BEGINNING at a 3/4" iron rod found in the east line of Interstate Highway (IH) 35/ Loop 410 (R.O.W. Varies), also being the southwest corner of said Lot 44, and being the northwest corner of Lot 36, of the Replat of Toys "R" Us Subdivision, recorded in Volume 9520, Page 187, (D.P.R.B.C.T.), for the southwest corner and **POINT OF BEGINNING** hereof, from which a 4" Texas Department of Transportation (TXDOT) brass disk monument found in the east line of said IH 35/ Loop 410 at station 1882+00 and offset right 213.20', bears S09°56'18"W, a distance of 454.36 feet;

THENCE, with the east line of said IH 35/ Loop 410, same being the west line of said Lot 44, N09°56'18"E, a distance of 437.50 feet to 1/2-inch iron rod found for an angle point hereof, same being the southwest corner of Lot 45 of said Replat Establishing Simon Apple Garden;

THENCE, leaving the east line of said IH 35/ Loop 410, same being the west line of said Lot 44, with the common line between said Lots 44 and 45, the following five (5) courses and distances:

1) S80°21'18"E, a distance of 217.15 feet to a PK nail found for an angle point hereof, same being the southeast corner of said Lot 45, and a southeast corner of said Lot 44;
2) N10°05'00"E, a distance of 147.36 feet to a 1/2-inch iron rod found for an angle point hereof, same being a northeast corner for said Lot 45, also being an angle point for said Lot 44;
3) N80°16'37"W, a distance of 22.47 feet to a 1/2-inch iron rod found for an angle point hereof, same being an angle point for said Lots 44 and 45;
4) N09°43'58"E, a distance of 9.05 feet to a 1/2-inch iron rod found for an angle point hereof, same being a northeast corner for said Lot 45, also being an angle point for said Lot 44;
5) N80°08'26"W, a distance of 195.02 feet to a 1/2-inch iron rod found for an angle point hereof, same being the northwest corner of said Lot 45, also being an angle point of said Lot 44, same being a point in the east line of said IH 35/ Loop 410;

THENCE, with the east line of said IH 35/ Loop 410, same being the west line of said Lot 44, N09°56'18"E, a distance of 64.23 feet to a 1/2-inch iron rod with "Vickery" cap found for an angle point hereof, same being the southwest corner of Lot 46 of said Replat Establishing Simon Apple Garden, also being an angle point for said Lot 44;

THENCE, leaving the east line of said IH35/ Loop 410, same being the west line of said Lot 44, with the common line between said Lots 44 and 46, S80°07'28"E, a distance of 225.13 feet to a 1/2-inch iron found for an angle point hereof, same being the southeast corner of said Lot 46, also being an angle point for said Lot 44;

THENCE, continuing with the common line between said Lots 44 and 46, N09°56'34"E, a distance of 230.05 feet a 1/2-inch iron rod found for an angle point hereof, same being the northeast corner of said Lot 46, same being an angle point for said Lot 44,

THENCE, crossing through said Lot 24, S80°02'51"E, a distance of 37.96 feet to a PK nail found for an angle point hereof, same being an angle point for said 11.5384 acre tract, also being an angle point for said Lot 44;

THENCE, continuing through said Lot 24, with a north line of said 11.5384 acre tract, N89°45'32"E, a distance of 103.11 feet to a PK nail found for an angle point hereof, same being an angle point of said 11.5384 acre tract, said point lies within said Lot 24;

THENCE, continuing through said Lot 24, with a west line of said 11.5384 acre tract, N00°36'38"E, a distance of 327.41 feet to a PK nail found for an angle point hereof, same being an angle point of said 11.5384 acre tract, said point lies within said Lot 24;

THENCE, continuing through said Lot 24, with a south line of said 11.5384 acre tract, N80°48'25"W, a distance of 311.55 feet to a PK nail found for an angle point hereof, same being an angle point of said 11.5384 acre tract, and being a point in the west line of said Lot 24, also being a point in the east line of said IH35/ Loop 410;

THENCE, with the west line of said Lot 24, same being the east line of said IH 35/ Loop 410, N09°56'18"E, a distance of 54.60 feet to a 1/2-inch iron rod with "Doucet & Assoc," cap set for a northwest corner hereof, same being a northwest corner of said Lot 24, and the southwest corner of Lot 22 of the Simon Subdivision recorded in Volume 7300, Page 69, (D.P.R.B.C.T.);

THENCE, with the south line of said Lot 22, and the north line of said Lot 24, N85°26'50"E, a distance of 381.62 feet to a PK nail with "Brown" shiner found for a point of curvature (P.C.) hereof, same being a P.C. for said Lot 22, also being a northwest corner and P.C. of said Lot 25;

THENCE, continuing with the southeast line of said Lot 22, and with the northwest line of said Lot 25, along a curve to the left, whose radius is 159.75 feet, whose delta is 85°23'33", at an arc length of 238.09 feet, and overall chord which bears N42°47'06"E, a distance 216.66 feet to a 1/2-inch iron rod with

"Vickery" aluminum cap found for a point of tangency (P.T.) hereof, same being a P.T. for said Lots 22 and 25;

THENCE, continuing with the west line of said Lot 22, and the east line of said Lot 25, N00°05'45"E, a distance of 249.80 to a 1/2-inch iron rod with "Vickery" cap found for a northwest corner hereof, same being a northwest corner of said Lot 25, and a northeast corner of said Lot 22, same being a point in the south line of Walzem Road/ Farm to Market (FM) 1976 (R.O.W. Varies);

THENCE, with the south line of said Walzem Road/ FM 1976, and the north line of said Lot 25, N89°47'19"E, a distance of 112.39 feet to a Mag nail with "Brown" shiner found for an angle point hereof, same being an angle point for said Lot 25, also being an angle point for said Walzem Road/ FM 1976, from which a 4" Texas Department of Transportation (TXDOT) brass disk monument found bears, S76°06'59"W, a distance of 1.29 feet;

THENCE, continuing with the south line of said Walzem Road/ FM 1976, and the north line of said Lot 25, S88°27'18"E, a distance of 120.88 feet to a Mag nail with "Doucet" washer set for an angle point hereof;

THENCE, leaving the south line of said Walzem Road/ FM 1976, same being the north line of said Lot 25, passing through said Lot 25 the next four (4) courses and distances:

1) S00°17'20"E, distance of 268.51 feet to a Mag nail with "Doucet" washer set for an angle point hereof;
2) Along a curve to the right, whose radius is 921.48 feet, whose delta is 01°33'47"", whose arc length is 25.14 feet, and whose chord bears N77°14'29"E, a distance of 25.14 feet to a Mag nail with "Doucet" washer set for a point of reverse curvature (P.R.C.) hereof;

3) Along a curve to the left, whose radius is 750.00 feet, whose delta is 09°26'18", whose arc length is 123.55 feet, and whose chord bears N73°18'14"E, a distance of 123.41 feet to a Mag nail with "Doucet" washer set for a point of compound curvature (P.C.C.) hereof;
4) Along a curve to the left, whose radius is 2010.40 feet, whose delta is 03°54'26", whose arc length is 137.10' feet, and whose chord bears N66°37'52"E, a distance of 137.07 feet to a Mag nail with "Doucet" washer set for a point of compound curvature (P.C.C.) hereof;

THENCE, continuing through said Lot 25, and in part through said Lot 44, along a curve to the left, whose radius is 500.00 feet, whose delta is 10°19'44", at an arc length of 14.77 feet passing the common line between said Lots 25 and 44, for an overall arc length of 90.14 feet, and whose overall chord bears N59°30'47"E, a distance of 90.02 feet to a Mag nail with "Doucet" washer set for a P.R.C. hereof, said point lies within said Lot 44;

THENCE, continuing in part through said Lot 44, and through said Lot 38, along a curve to the right, whose radius is 500.00 feet, whose delta is 11°52'41", at an arc length of 3.44 feet passing the common line between said Lots 44 and 38, for an overall arc length of 103.66 feet, and whose overall chord bears N60°17'16"E, a distance of 103.47 feet to a Mag nail with "Doucet" washer set for a P.T. hereof, said point lies in said Lot 38;

THENCE, continuing through said Lot 38, N16°51'51"W, a distance of 69.10 feet to a PK nail with "Brown" shiner found for an angle point hereof, same being a point in the south line of said Walzem Road/ FM 1976, also being the northern most northwest corner of said Lot 38, and the northeast corner of said Lot 44;

THENCE, with the south line of said Walzem Road/ FM 1976, same being the north line of said Lot 38, N89°44'36"E, a distance of 592.04 feet to a 1/2-inch iron rod with "Vickery" aluminum cap found for an angle point hereof, same being an angle point in the south line of said Walzem Road/ FM 1976, and an angle point in the north line of said Lot 38;

THENCE, continuing with the south line of said Walzem Road/ FM 1976, same being the north line of said Lot 38, N88°28'52"E, a distance of 17.99 feet to a "X" cut in concrete for the northern most northeast corner hereof, same being the northern most northeast corner of said Lot 38, also being the northwest corner of Lot 39 of said Replat of Subdivision Plat of Simon Subdivision,

THENCE, leaving the south line of said Walzem Road/ FM 1976, with the common line between said Lots 38 and 39 the following four (4) courses and distances:

1) S00°16'05"E, a distance of 151.24 feet to a 1/2-inch iron rod with "Vickery" aluminum cap found for an angle point hereof, same being the southwest corner of said Lot 39, and an angle point for said Lot 38;
2) N89°45'07"E, a distance of 131.79 feet to a 1/2-inch iron rod found for an angle point hereof, same being a southeast corner of said Lot 39, also being an angle point for said Lot 38;
3) N00°14'38"W, a distance of 18.06 feet to a 1/2-inch iron rod with "Vickery" cap found for an angle point hereof, same being an angle point for said Lots 38 and 39;

4) N89°37'31"E, a distance of 27.57 feet to a PK nail found for the eastern most northeast corner hereof, same being the eastern most southeast corner for said Lot 39, and the eastern most northeast corner of said Lot 38, also being a point in the west line of Lot 2, Block 1 of the Replat and Subdivision Plat Establishing Roosevelt High School Subdivision recorded in Volume 9566, Page 132, (D.P.R.B.C.T.);

THENCE, in part with the east line of Lot 38 and in part with the east line of Lot 37, both of said Replat of Simon Subdivision, and with the west line of Lot 2 of said Roosevelt High School, S00°13'42"E, at a distance of 685.73 feet passing the northeast corner of Lot 37, and being the southeast corner of Lot 38, for a total distance of 1379.71 feet to a PK Nail with "Brown" washer found for an interior ell corner hereof, said point is also an interior ell corner of said Lot 37, and being the southwest corner of said Lot 2;

THENCE, with a north line of said Lot 37, and in part with the south line of said Lot 2, N89°35'15"E, a distance of 63.93 feet to a PK with Shiner found for an exterior ell corner hereof, said point is also an exterior ell corner of said Lot 37;

THENCE, in part with an east line of said Lot 37, and in part with an east line of Lot 44 of said Replat Establishing Simon Apple Garden, S00°31'25"E, a distance of 145.30 feet to a 1/2" iron rod found for a southeast corner hereof, said point is also a southeast corner of said Lot 44 and being the northwest corner of Lot 12, Block 10 of Camelot Subdivision Unit 7, recorded in Volume 6500, Page 144 (D.P.R.B.C.T.), and being a point in the east line of a 40' City Public Service Board Easement as shown on said plat,

THENCE, with the south line of said Lot 44, and the north line of said 40' City Service Board Easement, S89°43'01"W, a distance of 39.73 feet to a 1/2" iron rod found for an interior ell corner hereof, said point is also a point on the west line of said 40' City Public Service Board Easement, and being an interior ell corner of said Lot 44;

THENCE, with the west line of said 40' City Public Service Board Easement, and a west line of said Lot 44, S00°56'32"W, a distance of 15.88 feet to a 1/2" iron rod found for an exterior ell corner hereof, said point is also an exterior ell corner of said Lot 44, and being the northeast corner of Lot 13 of said Camelot Subdivision;

THENCE, in part with the north line of Lots 13-26, Block "D" of said Camelot Subdivision, and in part with the north line of Lot 9, Block "B", of Camelot Subdivision Unit 5A, recorded in Volume 6500, Page 16 (D.P.R.B.C.T.), and in part with the north line of Lot 49 of Windsor Square Wal-Mart III recorded in Volume 9560, Page 80 (D.P.R.B.C.T.), and in part with the north line of Lot 36 of said Toys "R" Us, S89°31'43"W, a distance of 2200.44 feet to the POINT OF BEGINNING and containing 66.9915 Acre (2,918,150 sq. ft.) of land, more or less.

TERMINATION AND RELEASE AGREEMENT

STATE OF TEXAS §
§
COUNTY OF BEXAR §

This TERMINATION AND RELEASE AGREEMENT (this "**Release**") is entered into this _____ day of _____, 2012, by JAMES C. NIEMANN, TRUSTEE FOR THE NFP PARTNERSHIP, a Texas general partnership("**NFP**"), RACKSPACE US, INC., a Delaware corporation ("**Rackspace**"), and WINDCREST ECONOMIC DEVELOPMENT CORPORATION, on behalf of itself and the City of Windcrest, Texas ("**Windcrest**").

RECITALS

A. NFP is the Owner of certain real property in the City of Windcrest, Bexar County, Texas, which comprises all of (i) that certain property at the southeast corner of IH-35 and Walzem Road, as more particularly described in the Agreement (as defined below), and (ii) Owners adjoining tract to the south beginning at the IH 35 frontage road and extending to within 220 feet of King Arthur Drive, as more particularly described in the Agreement (such property as defined in the Agreement being collectively referred to herein as the "**NFP Parcels**"), also being described on **Exhibit A** attached hereto.

B. The NFP Parcels are located adjacent to that certain property, formerly known as Windsor Park Mall, as more particularly described on **Exhibit B** attached hereto and made a part hereof for all purposes (the "**Former Mall Property**"). Windcrest is the Owner of the Former Mall Property and Rackspace is the ground lessee thereof.

C. The NFP Parcels and the Former Mall Property are subject to, encumbered by, and have certain rights, pursuant to that certain Agreement dated August 25, 1972, recorded in Volume 6935, Page 332, in the Deed Records of Bexar County Texas (the "**Original Agreement**"), as amended by that certain Agreement dated January 24, 1977, recorded in Volume 8009, Page 221, in the Deed Records of Bexar County Texas (the "**First Amendment**"), and that certain Satisfaction and Release dated September 15, 1977, recorded in Volume 8273, Page 575, in the Deed Records of Bexar County Texas (the "**Second Amendment**") (the Original Agreement, First Amendment and Second Amendment being collectively referred to herein as, the "**Agreement**").

D. The Former Mall Property is being redeveloped, and, in connection with such redevelopment, the Windcrest, as the Owner, and Rackspace, as the Occupant, of the Former Mall Property have requested and the Owners of the NFP Parcels have agreed to release and terminate the Agreement in its entirety.

E. As the Owner of the NFP Parcels, NFP desires to terminate and release in its entirety the Agreement; and as the respective Owner and Occupant of the Former Mall Property, Windcrest and Rackspace desire to terminate and release in its entirety the Agreement.

NOW THEREFORE, for and in consideration of One and No/100 Dollar ($1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, the Owner of the NFP Parcels and the Owner and Occupant of the Former Mall Property hereby recites and agrees as follows:

1. Recitals Incorporated; Exhibits Incorporated. The Recitals set forth above are hereby incorporated by this reference and shall be deemed terms and provisions hereof with the same force and effect as if fully set forth in this Section 1. All exhibits attached to this Release shall be deemed incorporated into this Release for all purposes hereunder.

2. Authority. NFP is the current Owner of the NFP Parcels and is the successor-in-interest to the rights and obligations in the Agreement affecting and inuring to the benefit of the NFP Parcels, and NFP has the authority to enter into this Release as to the NFP Parcels, without the joinder of any other party, including without limitation, any Occupant, Permittee or mortgagee of the NFP Parcels.

Windcrest is the current Owner of the Former Mall Property and is the successor-in-interest to the rights and obligations in the Agreement affecting and inuring to the benefit of the Former Mall Property, and Windcrest has the authority to enter into this Release as to the Former Mall Property, without the joinder of any other party, including without limitation, any Occupant, Permittee or mortgagee of the Former Mall Property (except for the specific consent of Rackspace as the ground lessee thereof attached hereto and made a part hereof for all purposes).

3. Termination and Release. The Owners of the NFP Parcel and the Owner and Occupant of the Former Mall Property do hereby terminate and release in its entirety the Agreement. From and after the date hereof, the Agreement shall be deemed null and void and of no further force or effect.

4. Defined Terms. For purposes of this Release, (i) the term "**Owner**" shall mean the record, fee simple owner of all or any portion of the respective parcels; (ii) the term "**Occupant**" shall mean any individual, partnership, firm, association, corporation, limited liability company, trust, governmental agency, administrative tribunal or any other form of business or legal entity, from time to time, entitled to the use and occupancy of all or any portion of the respective parcels, as Owner or under any ground lease, lease, sublease, license, concession or other similar agreement as to the respective parcels; and (iii) the term "**Permittee**" shall mean the officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees and licensees of any Owner or Occupants insofar as their activities relate to the intended use of the respective parcels.

5. Runs With the Land; Binding Effect; Capitalized Terms. From and after the date hereof, this Release shall run with the land and shall (i) be binding upon and inure to the benefit of the Owners, Occupants and Permittees of the NFP Parcels (and their respective successors

and assigns) and the Owners, Occupants and Permittees of the Former Mall Property (and their respective successors and assigns). All capitalized terms used herein but not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement, as applicable.

[Signature Pages Follow]

EXECUTED to be effective the date first written above.

James C. Niemann, Trustee for The NFP Partnership,
a Texas general partnership

By: _____
Name: James C. Niemann
Title: Trustee

STATE OF TEXAS §
§
COUNTY OF _____ §

This instrument was acknowledged before me the ___ day of _____, 2012, by James C. Niemann, Trustee of The NFP Partnership, a Texas general partnership, on behalf of said limited partnership.

_____
Notary Public, in and for
The State of Texas

RACKSPACE US, INC.
a Delaware corporation

By: _____
Name: _____
Title: _____

THE STATE OF _____ §
§
COUNTY OF _____ §

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, the _____ of Rackspace US, Inc., a Delaware corporation, on behalf of said corporation.

_____
Notary Public in and for
The State of _____

WINDCREST ECONOMIC DEVELOPMENT CORPORATION

By: _____
Name: _____
Title: _____

THE STATE OF _____ §
§
COUNTY OF _____ §

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, the _____ of Windcrest Economic Development Corporation, on behalf of said corporation.

_____
Notary Public in and for
THE STATE OF _____

Exhibit A
NFP Parcels

That certain property comprising all of Lot 23, Walzem Road Subdivision, being more particularly described on the map or plat thereof recorded in Volume 7100, Page 12 of the Deed and Plat Records of Bexar County, Texas.

TOGETHER WITH:

That certain property comprising all of Lot 30, N.C.B. 12190, Simon Subdivision, being more particularly described on the map or plat thereof recorded in Volume 7800, Page 187 of the Deed and Plat Records of Bexar County, Texas.

TOGETHER WITH:

That certain property comprising all of Lot 36, of the Replat of Toys R' Us Subdivision, being more particularly described on the map or plat thereof recorded in Volume 9520, Page 187 of the Deed and Plat Records of Bexar County, Texas.

EXHIBIT B

BEGINNING at a 3/4" Iron rod found in the east line of Interstate Highway (IH) 35/ Loop 410 (R.O.W. Varies), also being the southwest corner of said Lot 44, and being the northwest corner of Lot 36, of the Replat of Toys "R" Us Subdivision, recorded in Volume 9520, Page 187, (D.P.R.B.C.T.), for the southwest corner and POINT OF BEGINNING hereof, from which a 4" Texas Department of Transportation (TXDOT) brass disk monument found in the east line of said IH 35/ Loop 410 at station 1882+00 and offset right 213.20', bears S09°56'18"W, a distance of 454.36 feet;

THENCE, with the east line of said IH 35/ Loop 410, same being the west line of said Lot 44, N09°56'18"E, a distance of 437.50 feet to 1/2-inch iron rod found for an angle point hereof, same being the southwest corner of Lot 45 of said Replat Establishing Simon Apple Garden;

THENCE, leaving the east line of said IH 35/ Loop 410, same being the west line of said Lot 44, with the common line between said Lots 44 and 45, the following five (5) courses and distances:

1) S80°21'18"E, a distance of 217.15 feet to a PK nail found for an angle point hereof, same being the southeast corner of said Lot 45, and a southeast corner of said Lot 44;
2) N10°05'00"E, a distance of 147.36 feet to a 1/2-inch iron rod found for an angle point hereof, same being a northeast corner for said Lot 45, also being an angle point for said Lot 44;
3) N80°16'37"W, a distance of 22.47 feet to a 1/2-inch iron rod found for an angle point hereof, same being an angle point for said Lots 44 and 45;
4) N09°43'58"E, a distance of 9.05 feet to a 1/2-inch iron rod found for an angle point hereof, same being a northeast corner for said Lot 45, also being an angle point for said Lot 44;
5) N80°08'26"W, a distance of 195.02 feet to a 1/2-inch iron rod found for an angle point hereof, same being the northwest corner of said Lot 45, also being an angle point of said Lot 44, same being a point in the east line of said IH 35/ Loop 410;

THENCE, with the east line of said IH 35/ Loop 410, same being the west line of said Lot 44, N09°56'18"E, a distance of 64.23 feet to a 1/2-inch iron rod with "Vickery" cap found for an angle point hereof, same being the southwest corner of Lot 46 of said Replat Establishing Simon Apple Garden, also being an angle point for said Lot 44;

THENCE, leaving the east line of said IH35/ Loop 410, same being the west line of said Lot 44, with the common line between said Lots 44 and 46, S80°07'28"E, a distance of 225.13 feet to a 1/2-inch iron found for an angle point hereof, same being the southeast corner of said Lot 46, also being an angle point for said Lot 44;

THENCE, continuing with the common line between said Lots 44 and 46, N09°56'34"E, a distance of 230.05 feet a 1/2-inch iron rod found for an angle point hereof, same being the northeast corner of said Lot 46, same being an angle point for said Lot 44;

THENCE, crossing through said Lot 24, S80°02'51"E, a distance of 37.96 feet to a PK nail found for an angle point hereof, same being an angle point for said 11.5384 acre tract, also being an angle point for said Lot 44;

THENCE, continuing through said Lot 24, with a north line of said 11.5384 acre tract, N89°45'32"E, a distance of 103.11 feet to a PK nail found for an angle point hereof, same being an angle point of said 11.5384 acre tract, said point lies within said Lot 24;

THENCE, continuing through said Lot 24, with a west line of said 11.5384 acre tract, N00°36'38"E, a distance of 327.41 feet to a PK nail found for an angle point hereof, same being an angle point of said 11.5384 acre tract, said point lies within said Lot 24;

THENCE, continuing through said Lot 24, with a south line of said 11.5384 acre tract, N80°48'25"W, a distance of 311.55 feet to a PK nail found for an angle point hereof, same being an angle point of said 11.5384 acre tract, and being a point in the west line of said Lot 24, also being a point in the east line of said IH35/ Loop 410;

THENCE, with the west line of said Lot 24, same being the east line of said IH 35/ Loop 410, N09°56'18"E, a distance of 54.60 feet to a 1/2-inch iron rod with "Doucet & Assoc," cap set for a northwest corner hereof, same being a northwest corner of said Lot 24, and the southwest corner of Lot 22 of the Simon Subdivision recorded in Volume 7300, Page 69, (D.P.R.B.C.T.);

THENCE, with the south line of said Lot 22, and the north line of said Lot 24, N85°26'50"E, a distance of 381.62 feet to a PK nail with "Brown" shiner found for a point of curvature (P.C.) hereof, same being a P.C. for said Lot 22, also being a northwest corner and P.C. of said Lot 25;

THENCE, continuing with the southeast line of said Lot 22, and with the northwest line of said Lot 25, along a curve to the left, whose radius is 159.75 feet, whose delta is 85°23'33", an arc length of 238.09 feet, and overall chord which bears N42°47'06"E, a distance 215.66 feet to a 1/2-inch iron rod with

"Vickery" aluminum cap found for a point of tangency (P.T.) hereof, same being a P.T. for said Lots 22 and 25;

THENCE, continuing with the west line of said Lot 22, and the east line of said Lot 25, N00°05'45"E, a distance of 249.80 to a 1/2-inch iron rod with "Vickery" cap found for a northwest corner hereof, same being a northwest corner of said Lot 25, and a northeast corner of said Lot 22, same being a point in the south line of Walzem Road/ Farm to Market (FM) 1976 (R.O.W. Varies);

THENCE, with the south line of said Walzem Road/ FM 1976, and the north line of said Lot 25, N89°47'19"E, a distance of 112.39 feet to a Mag nail with "Brown" shiner found for an angle point hereof, same being an angle point for said Lot 25, also being an angle point for said Walzem Road/ FM 1976, from which a 4" Texas Department of Transportation (TXDOT) brass disk monument found bears, S76°06'59"W, a distance of 1.29 feet;

THENCE, continuing with the south line of said Walzem Road/ FM 1976, and the north line of said Lot 25, S88°27'18"E, a distance of 120.88 feet to a Mag nail with "Doucet" washer set for an angle point hereof;

THENCE, leaving the south line of said Walzem Road/ FM 1976, same being the north line of said Lot 25, passing through said Lot 25 the next four (4) courses and distances:

1) S00°17'20"E, distance of 268.51 feet to a Mag nail with "Doucet" washer set for an angle point hereof;
2) Along a curve to the right, whose radius is 921.48 feet, whose delta is 01°33'47"", whose arc length is 25.14 feet, and whose chord bears N77°14'29"E, a distance of 25.14 feet to a Mag nail with "Doucet" washer set for a point of reverse curvature (P.R.C.) hereof;

3) Along a curve to the left, whose radius is 750.00 feet, whose delta is 09°26'13", whose arc length is 123.55 feet, and whose chord bears N73°18'14"E, a distance of 123.41 feet to a Mag nail with "Doucet" washer set for a point of compound curvature (P.C.C.) hereof;
4) Along a curve to the left, whose radius is 2010.40 feet, whose delta is 03°54'26", whose arc length is 137.10' feet, and whose chord bears N66°37'52"E, a distance of 137.07 feet to a Mag nail with "Doucet" washer set for a point of compound curvature (P.C.C.) hereof;

THENCE, continuing through said Lot 25, and in part through said Lot 44, along a curve to the left, whose radius is 500.00 feet, whose delta is 10°19'44", at an arc length of 14.77 feet passing the common line between said Lots 25 and 44, for an overall arc length of 90.14 feet, and whose overall chord bears N59°30'47"E, a distance of 90.02 feet to a Mag nail with "Doucet" washer set for a P.R.C. hereof, said point lies within said Lot 44;

THENCE, continuing in part through said Lot 44, and through said Lot 38, along a curve to the right, whose radius is 500.00 feet, whose delta is 11°52'41", at an arc length of 3.44 feet passing the common line between said Lots 44 and 38, for an overall arc length of 103.66 feet, and whose overall chord bears N60°17'16"E, a distance of 103.47 feet to a Mag nail with "Doucet" washer set for a P.T. hereof, said point lies in said Lot 38;

THENCE, continuing through said Lot 38, N16°51'51"W, a distance of 69.10 feet to a PK nail with "Brown" shiner found for an angle point hereof, same being a point in the south line of said Walzem Road/ FM 1976, also being the northern most northwest corner of said Lot 38, and the northeast corner of said Lot 44;

THENCE, with the south line of said Walzem Road/ FM 1976, same being the north line of said Lot 38, N89°44'36"E, a distance of 592.04 feet to a 1/2-inch iron rod with "Vickery" aluminum cap found for an angle point hereof, same being an angle point in the south line of said Walzem Road/ FM 1976, and an angle point in the north line of said Lot 38;

THENCE, continuing with the south line of said Walzem Road/ FM 1976, same being the north line of said Lot 38, N88°28'52"E, a distance of 17.99 feet to a "X" cut in concrete for the northern most northeast corner hereof, same being the northern most northeast corner of said Lot 38, also being the northwest corner of Lot 39 of said Replat of Subdivision Plat of Simon Subdivision;

THENCE, leaving the south line of said Walzem Road/ FM 1976, with the common line between said Lots 38 and 39 the following four (4) courses and distances:

1) S00°16'05"E, a distance of 151.24 feet to a 1/2-inch iron rod with "Vickery" aluminum cap found for an angle point hereof, same being the southwest corner of said Lot 39, and an angle point for said Lot 38;
2) N89°45'07"E, a distance of 131.79 feet to a 1/2-inch iron rod found for an angle point hereof, same being a southeast corner of said Lot 39, also being an angle point for said Lot 38;
3) N00°14'38"W, a distance of 18.06 feet to a 1/2-inch iron rod with "Vickery" cap found for an angle point hereof, same being an angle point for said Lots 38 and 39;

4) N89°37'31"E, a distance of 27.57 feet to a PK nail found for the eastern most northeast corner hereof, same being the eastern most southeast corner for said Lot 39, and the eastern most northeast corner of said Lot 38, also being a point in the west line of Lot 2, Block 1 of the Replat and Subdivision Plat Establishing Roosevelt High School Subdivision recorded in Volume 9566, Page 132, (D.P.R.B.C.T.);

THENCE, in part with the east line of Lot 38 and in part with the east line of Lot 37, both of said Replat of Simon Subdivision, and with the west line of Lot 2 of said Roosevelt High School, S00°13'42"E, at a distance of 685.73 feet passing the northeast corner of Lot 37, and being the southeast corner of Lot 38, for a total distance of 1379.71 feet to a PK Nail with "Brown" washer found for an interior ell corner hereof, said point is also an interior ell corner of said Lot 37, and being the southwest corner of said Lot 2;

THENCE, with a north line of said Lot 37, and in part with the south line of said Lot 2, N89°35'15"E, a distance of 63.93 feet to a PK with Shiner found for an exterior ell corner hereof, said point is also an exterior ell corner of said Lot 37;

THENCE, in part with an east line of said Lot 37, and in part with an east line of Lot 44 of said Replat Establishing Simon Apple Garden, S00°31'25"E, a distance of 145.30 feet to a 1/2" iron rod found for a southeast corner hereof, said point is also a southeast corner of said Lot 44 and being the northwest corner of Lot 12, Block 10 of Camelot Subdivision Unit 7, recorded in Volume 6500, Page 144 (D.P.R.B.C.T.), and being a point in the east line of a 40' City Public Service Board Easement as shown on said plat,

THENCE, with the south line of said Lot 44, and the north line of said 40' City Service Board Easement, S89°43'01"W, a distance of 39.73 feet to a 1/2" iron rod found for an interior ell corner hereof, said point is also a point on the west line of said 40' City Public Service Board Easement, and being an interior ell corner of said Lot 44;

THENCE, with the west line of said 40' City Public Service Board Easement, and a west line of said Lot 44, S00°56'32"W, a distance of 15.88 feet to a 1/2" iron rod found for an exterior ell corner hereof, said point is also an exterior ell corner of said Lot 44, and being the northeast corner of Lot 13 of said Camelot Subdivision;

THENCE, in part with the north line of Lots 13-26, Block "D" of said Camelot Subdivision, and in part with the north line of Lot 9, Block "B", of Camelot Subdivision Unit 5A, recorded in Volume 6500, Page 16 (D.P.R.B.C.T.), and in part with the north line of Lot 49 of Windsor Square Wal-Mart III recorded in Volume 9560, Page 80 (D.P.R.B.C.T.), and in part with the north line of Lot 36 of said Toys "R" Us, S89°31'43"W, a distance of 2200.44 feet to the POINT OF BEGINNING and containing 66.9915 Acre (2,918,150 sq. ft.) of land, more or less.

EASEMENT AND USE RESTRICTION AGREEMENT

This Easement and Use Restriction Agreement (this "**Agreement**") is made and entered into effective as of the ____ day of _____, 2012 (the "**Effective Date**"), by and between (i) RACKSPACE US, INC., a Delaware corporation ("**Rackspace**"); (ii) GVD COMMERCIAL PROPERTIES, INC., a California corporation ("**GVD**"); (iii) MONTE MAC NO. 2, a California limited partnership ("**MM2**"); and (iv) WINDCREST ECONOMIC DEVELOPMENT CORPORATION, a Section 4(b) corporation, on behalf of itself and the City of Windcrest, Texas ("**Windcrest**").

ARTICLE 1.

Recitals

1.1 **Rackspace Parcel**. Windcrest is the Owner of certain real property in the City of Windcrest, Bexar County, Texas, more particularly described and depicted on **Exhibit A and A-1** attached hereto (the "**Rackspace Parcel**") and Rackspace is the ground lessee thereof pursuant to the "Rackspace Lease" (defined below).

1.2 **Olive Garden Parcel, Benny's Parcel and Applebee's Parcel**. GVD is the Owner of certain real property in the City of Windcrest, Bexar County, Texas adjacent to the Rackspace Parcel, more particularly described and depicted on **Exhibit B and B-1** attached hereto (the "**Olive Garden Parcel**"). GVD has the authority to enter into this Agreement as to the Olive Garden Parcel, without the joinder of any other party, including without limitation, any Occupant, Permittee or mortgagee of the Olive Garden Parcel (except for the specific consent attached hereto and made a part hereof for all purposes). MM2 is the Owner of certain real property in the City of Windcrest, Bexar County, Texas adjacent to the Rackspace Parcel, more particularly described and depicted on **Exhibit C and C-1** attached hereto (the "**Benny's Parcel**"). MM2 is also the Owner of certain real property in the City of Windcrest, Bexar County, Texas adjacent to the Rackspace Parcel, more particularly described and depicted on **Exhibit D and D-1** attached hereto (the "**Applebee's Parcel**") (the Olive Garden Parcel, Benny's Parcel and Applebee's Parcel are each referred to herein as an "**Outparcel**", and collectively referred to herein as the "**Outparcels**"). MM2 has the authority to enter into this Agreement as to the Benny's Parcel and Applebee's Parcel, without the joinder of any other party, including without limitation, any Occupant, Permittee or mortgagee of the Benny's Parcel or Applebee's Parcel (except for the specific consent attached hereto and made a part hereof for all purposes).

1.3 **Access, Parking and Signage Easements**. Windcrest and Rackspace (joined herein by GVD and MM2), each having all requisite authority to do so, desire to subject specifically designated portions of the Rackspace Parcel to certain easements for pedestrian and vehicular ingress, egress, parking and other purposes as set forth hereinbelow, and to subject specifically designated portions of the Rackspace Parcel to certain signage easements as set forth hereinbelow, subject to which the Rackspace Parcel shall be held, improved and conveyed in perpetuity, for the benefit of the Olive Garden Parcel, the Benny's Parcel and the Applebee's Parcel, as more particularly set forth herein.

1.4 **Use Restrictions**. Windcrest, Rackspace, GVD and MM2, each having all requisite authority to do so, desire to subject the Property to certain restrictions on use, as more particularly set forth herein.

1.5 **Termination of Prior Agreements.** As partial consideration for entering into this Agreement, the parties hereto covenant and agree that the following recorded documents and/or instruments shall be terminated of record in the official records of Bexar County, Texas, immediately following the Completion Date (defined below) under this Agreement in such official records of Bexar County, Texas (and simultaneously with the recordation of any Amendment to this Agreement that is required post construction in order to confirm and/or establish all final legal descriptions of the properties and easement areas described herein): 1) Easement and Operating Agreement, dated September 10, 1974, recorded in Volume 7451, Page 649, in the Real Property Records of Bexar County, Texas (the "**Original REA**"); as amended, modified and partially released by: (i) that certain Modification of Easement and Operating Agreement, dated May 5, 1975, recorded in Volume 7693, Page 199, in the Real Property Records of Bexar County, Texas; (ii) that certain Second Amendment of Easement and Operating Agreement, dated April 15, 1977, recorded in Volume 8069, Page 704, in the Real Property Records of Bexar County, Texas; (iii) that certain Third Amendment of Easement and Operating Agreement, dated July 16, 1985, recorded in Volume 4820, Page 1829, in the Real Property Records of Bexar County, Texas; (iv) that certain Fourth Amendment of Easement and Operating Agreement, dated November 20, 1990, recorded in Volume 5004, Page 585, in the Real Property Records of Bexar County, Texas; and (v) that certain Partial Mutual Release and Modification of Easement and Operating Agreement, dated January 25, 2007, recorded in Volume 12689, Page 1166, in the Real Property Records of Bexar County, Texas (the "**Partial Release and Modification Agreement**")(the Original REA, the amendments thereto, and the Partial Release and Modification Agreement are collectively referred to herein as the "**REA**"); and 2) Covenants, Conditions and Restrictions Agreement, dated November 1, 2000, recorded in Volume 8630, Page 1609, in the Real Property Records of Bexar County, Texas (the "**CCR Agreement**").

NOW, THEREFORE, in consideration of the premises, the sum of Ten and No/100 Dollars ($10.00), and other good and valuable consideration in hand paid, and in consideration of the mutual agreements herein made, the receipt and sufficiency of which are hereby acknowledged, the undersigned hereby agree as follows:

ARTICLE 2.

Definitions

2.1 **Access Road**. That certain publicly dedicated road or roads to be constructed on the Rackspace Parcel, in the location depicted on the Site Plan as the "Access Road".

2.2 **Occupant**: Any Person, from time to time, entitled to the use and occupancy of any portion of the Property under any lease, sublease, license, concession or other similar agreement.

2.3 **Owner**: The fee title owner of any portion of the Property from time to time. Notwithstanding the foregoing, Rackspace, as the ground lessee of the Rackspace Parcel under the Rackspace Lease, shall be deemed the "Owner" of the Rackspace Parcel for all purposes under this Agreement, and Windcrest hereby consents to such designation, and consents that this Agreement shall be placed of record to confirm and establish all easements and other rights set forth herein as burdens and exceptions to the fee interest of the Rackspace Parcel.

2.4 **Parcel**. Any of the Rackspace Parcel, the Olive Garden Parcel, the Benny's Parcel or the Applebee's Parcel.

2.5 **Parking Tract(s)**. Parking Tract 1, Parking Tract 2-A, Parking Tract 2-B, and Parking Tract 3, as applicable (as shown on the copy of the Site Plan attached hereto as **Exhibit E** (as further defined below), with final metes and bounds legal descriptions of each Parking Tract, the Applebee's Monument Sign Area (defined below) and the Olive Garden Monument Sign Area (defined below) to be attached to the Amendment contemplated for this Agreement as set forth below, and filed of record upon completion of all Construction Work (defined below).

2.6 **Parking Tract 1**. That certain parking area on the Rackspace Parcel, in the location depicted on the Site Plan as "Parking Tract 1"; and more particularly depicted on **Exhibit E-1** attached hereto and made a part hereof for all purposes.

2.7 **Parking Tract 2-A**. That certain parking area on the Rackspace Parcel, in the location depicted on the Site Plan as "Parking Tract 2-A"; and more particularly depicted on **Exhibit E-1** attached hereto and made a part hereof for all purposes.

2.8 **Parking Tract 2-B**. That certain parking area on the Rackspace Parcel, in the location depicted on the Site Plan as "Parking Tract 2-B"; and more particularly depicted on **Exhibit E-1** attached hereto and made a part hereof for all purposes.

2.9 **Parking Tract 3.** That certain parking area on the Rackspace Parcel, in the location depicted on the Site Plan as "Parking Tract 3"; and more particularly depicted on **Exhibit E-2** attached hereto and made a part hereof for all purposes.

2.10 **Party**. Each of Windcrest, as the current fee title owner of the Rackspace Parcel, Rackspace, as the deemed Owner of the Rackspace Parcel for all purposes under this Agreement as set forth in Section 2.3 above, GVD, as the current Owner of the Olive Garden Parcel, and MM2, as the current Owner of the Applebee's Parcel and the Benny's Parcel.

2.11 **Permittee**: All Owners, Occupants and the partners, officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees and licensees of Owners and Occupants of any particular Parcel.

2.12 **Person**: Individuals, partnerships, firms, associations, corporations, trusts, governmental agencies, administrative tribunals or any other form of business or legal entity.

2.13 **Property**. The Rackspace Parcel, the Olive Garden Parcel, the Benny's Parcel and the Applebee's Parcel, collectively.

2.14 **Rackspace Lease**. That certain Ground Lease Agreement dated August 2, 2007, as amended from time to time, by and between Windcrest Economic Development Corporation, on behalf of the City of Windcrest, as landlord, and Rackspace, as tenant. The Rackspace Lease is evidenced by that certain Memorandum of Lease dated August 3, 2007, and recorded in the Official Records of Bexar County, Texas in Volume 13039, Page 2252. Neither GVD nor MM2 is privy to the terms and conditions of the Rackspace Lease, other than those set forth in the foregoing referenced Memorandum of Lease.

2.15 **Site Plan**. That certain drawing of the Property (including the Parking Tracts) attached hereto as **Exhibit E** and made a part hereof. The "Detailed Site Plans" are those certain more detailed drawings showing the Parking Tracts and the surrounding vicinity attached hereto as **Exhibit E-1** and **Exhibit E-2**. The site plans showing the Detailed Parking Lot Layouts on the Parking Tracts as of the Completion Date (as defined below) are attached hereto as **Exhibit F-1**, **Exhibit F-2**, **Exhibit F-3** and **Exhibit F-4**.

ARTICLE 3.

Easements

3.1 **Parking, Access and Signage Easements for the Applebee's Parcel**. The Owner of the Rackspace Parcel, as the Owner of Parking Tract 1 and 2-B, does hereby GRANT, SELL and CONVEY unto the Owner(s) of the Applebee's Parcel, for the benefit of the Owner(s) of the Applebee's Parcel, and its Occupants and Permittees, the following easements:

(i) an exclusive easement (except as set forth in Section 3.2(ii) below and Section 4.1 below), appurtenant to the Applebee's Parcel, for ingress and egress by vehicular and pedestrian traffic to and from the Applebee's Parcel over, upon and across Parking Tract 1 and Parking Tract 2-B and to and from the curb cuts connecting to the Access Road in the locations depicted upon the Site Plan as "Curb Cut A" and "Curb Cut A-1", as the same exist and/or are modified from time to time, subject to the requirements of applicable law and the terms, provisions and conditions hereof;

(ii) an exclusive easement (except as set forth in Section 4.1 below), appurtenant to the Applebee's Parcel, for vehicular parking upon the parking lot(s) constructed from time-to-time on Parking Tract 1, as the same exist and/or are modified from time to time, subject to the requirements of applicable law and the terms, provisions and conditions hereof; and

(iii) an exclusive easement (except as set forth in Section 4.1 below), appurtenant to the Applebee's Parcel, for the purpose of constructing, maintaining, servicing, operating, inspecting, replacing, modifying, reconstructing and/or removing one (1) monument sign advertising a then-current business operated on the Applebee's Parcel, upon the portion of Parking Tract 2-B depicted on the Site Plan as "Applebee's Monument Sign Area" (and as further depicted on the attached **Exhibit "G"**), subject to the requirements of applicable law and

the terms, provisions and conditions hereof (the easements described in clauses (i)-(iii) in this Section 3.1 being collectively referred to herein as, the "**Applebee's Easements**");

TO HAVE AND TO HOLD the Applebee's Easements, together with all and singular the rights and appurtenances thereunto belonging unto respective grantee, its successors and assigns, and each Owner of the Rackspace Parcel does hereby bind itself and its successors, to warrant and forever defend the Applebee's Easements unto each respective grantee, its successors and assigns, against all persons whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under each Owner of the Rackspace Parcel but not otherwise.

The Owner of the Applebee's Parcel shall have the right, at its sole cost and expense, to modify the configuration of the parking areas located on Parking Tract 1, subject to the prior written consent of the Owner of the Rackspace Parcel (such consent not to be unreasonably withheld, conditioned or delayed) as to any material and substantial reconfiguration and as to the detailed plans and specifications and timeline therefor. The curb cuts connecting into the Access Road, in the locations depicted upon the Site Plan as "Curb Cut A" and "Curb Cut A-1", shall not be modified, without the prior written consent of the Owner of the Rackspace Parcel and the Owners of the Applebee's Parcel and the Olive Garden Parcel. The plans and specifications for the monument sign constructed in the Applebee's Monument Sign Area, including, but not limited to, the design, height, and size thereof shall be subject to the prior written approval of the Owner of the Rackspace Parcel, such approval not to be unreasonably withheld, conditioned or delayed so long as any such monument sign is otherwise in compliance with all applicable governmental requirements.

Subject to the foregoing requirements, the Owner of the Applebee's Parcel shall have the right, without the consent of the Owner of the Rackspace Parcel, to add additional parking stops, directional signage, light standards, safety features, and other surface parking improvements or traffic control improvements whether or not required by applicable law to Parking Tract 1, so long as any such additions do not otherwise modify the configuration of Parking Tract 1 and/or Curb Cuts, and otherwise comply with the purposes for which the foregoing easements are granted; provided that any material and substantial reconfigurations of the parking areas on Parking Tract 1 shall require the prior written consent of the Owner of the Rackspace Parcel, such consent not to be unreasonably withheld, conditioned or delayed.

3.2 **Parking, Access and Signage Easement for the Olive Garden Parcel**. The Owner of the Rackspace Parcel, as the Owner of Parking Tract 1, 2-A and 2-B, does hereby GRANT, SELL and CONVEY unto the Owner of the Olive Garden Parcel for the benefit of the Owner of the Olive Garden Parcel and its Occupants and Permittees, the following easements:

(i) an exclusive easement (except as set forth in Section 4.1 below), appurtenant to the Olive Garden Parcel, for ingress and egress by vehicular and pedestrian traffic to and from the Olive Garden Parcel over, upon and across Parking Tract 2-A and to and from the curb cuts connecting to the Access Road in the location depicted upon the Site Plan as "Curb Cut B" and "Curb Cut B-1" as the same exist and/or are modified from time to time, subject to the requirements of applicable law and the terms, provisions and conditions hereof;

(ii) an exclusive easement (except as set forth in Section 3.1(i) above and Section 4.1 below), appurtenant to the Olive Garden Parcel, for ingress and egress by vehicular and

pedestrian traffic to and from the Olive Garden Parcel over, upon and across Parking Tract 1 and Parking Tract 2-B, but excluding the Applebee's Monument Sign Area, and to and from the curb cuts connecting to the Access Road in the location depicted upon the Site Plan as "Curb Cut A" and "Curb Cut A-1" as the same exist and/or are modified from time to time, subject to the requirements of applicable law and the terms, provisions and conditions hereof;

(iii) an exclusive easement (except as set forth in Section 4.1 below), appurtenant to the Olive Garden Parcel, for vehicular parking upon the parking lot(s) constructed from time-to-time on the Parking Tracts 2-A and 2-B, but excluding the Applebee's Monument Sign Area, as the same exist and/or are modified from time to time, subject to the requirements of applicable law and the terms, provisions and conditions hereof; and

(iv) an exclusive easement (except as set forth in Section 4.1 below), appurtenant to the Olive Garden Parcel, for the purpose of constructing, maintaining, servicing, operating, inspecting, replacing, modifying, reconstructing and/or removing one (1) monument sign advertising a then-current business operated on the Olive Garden Parcel, upon the portion of Parking Tract 2-A depicted on the Site Plan as "Olive Garden Monument Sign Area" (and as further depicted on the attached **Exhibit "H"**), subject to the requirements of applicable law and the terms, provisions and conditions hereof (the easements described in clauses (i)-(iv) of this Section 3.2 being collectively referred to herein as, the "**Olive Garden Easements**");

TO HAVE AND TO HOLD the Olive Garden Easements, together with all and singular the rights and appurtenances thereunto belonging unto respective grantee, its successors and assigns, and each Owner of the Rackspace Parcel does hereby bind itself and its successors, to warrant and forever defend the Olive Garden Easements unto each respective grantee, its successors and assigns, against all persons whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under each Owner of the Rackspace Parcel but not otherwise.

The Owner of the Olive Garden Parcel shall have the right, at its sole cost and expense, to modify the configuration of the parking areas located on the Parking Tracts 2-A and 2-B, subject to the prior written consent of the Owner of the Rackspace Parcel (such consent not to be unreasonably withheld, conditioned or delayed) as to any material and substantial reconfiguration and as to the detailed plans and specifications and timeline therefor. The curb cuts connecting into the Access Road, in the locations depicted upon the Site Plan as "Curb Cut B" and "Curb Cut B-1", shall not be modified, without the prior written consent of the Owner of the Rackspace Parcel and the Owner of the Olive Garden Parcel. The plans and specifications for the monument sign constructed in the Olive Garden Monument Sign Area, including, but not limited to, the design, height, and size thereof shall be subject to the prior written approval of the Owner of the Rackspace Parcel, such approval not to be unreasonably withheld, conditioned or delayed so long as any such monument sign is in otherwise in compliance with all applicable governmental requirements.

Subject to the foregoing requirements, the Owner of the Olive Garden Parcel shall have the right, without the consent of the Owner of the Rackspace Parcel, to add additional parking stops, directional signage, light standards, safety features, and other surface parking improvements or traffic control improvements whether or not required by applicable law to Parking Tract 2-A and 2-B, so long as any such additions do not otherwise modify the

configuration of the foregoing described Parking Tract 2-A and 2-B and/or Curb Cuts, and otherwise comply with the purposes for which the foregoing easements are granted; provided that any material and substantial reconfigurations of the parking areas on Parking Tracts 2-A and 2-B shall require the prior written consent of the Owner of the Rackspace Parcel, such consent not to be unreasonably withheld, conditioned or delayed.

Notwithstanding anything contained in this Agreement to the contrary, including without limitation, any other provision of Section 3.1 and 3.2 above, the Owner of the Applebee's Parcel and the Owner of the Olive Garden Parcel shall have the right, upon mutual agreement of such parties, to permit cross-parking between their respective Parking Tracts for the benefit of their respective Occupants and their Permittees, on such terms, provisions and conditions as are mutually acceptable to the Owner of the Applebee's Parcel and the Owner of the Olive Garden Parcel; provided, however that such parties shall record in the Real Property Records of Bexar County, Texas a memorandum specifying the terms, provisions and conditions upon which such cross-parking is granted, which memorandum shall expressly reference this Agreement and the rights of such parties pursuant to this subsection, and further provided that such parties shall first obtain any and all consents to such proposed cross-parking that such parties deem necessary from their respective Occupants of the Applebee's Parcel and the Olive Garden Parcel.

3.3 **Parking and Access Easement for Benny's Parcel**. The Owner of the Rackspace Parcel, as the Owner of Parking Tract 3, does hereby GRANT, SELL and CONVEY unto the Owner of the Benny's Parcel for the benefit of the Owner of the Benny's Parcel and its respective Occupants and Permittees, the following easements:

(i) an exclusive easement (except as set forth in Section 4.1 below), appurtenant to the Benny's Parcel, for ingress and egress by vehicular and pedestrian traffic to and from the Benny's Parcel over, upon and across Parking Tract 3 and to and from the curb cut connecting to the Access Road in the location depicted upon the Site Plan as "Curb Cut C" as the same exists and/or is modified from time to time, subject to the requirements of applicable law and the terms, provisions and conditions hereof;

(ii) an exclusive easement (except as set forth in Section 4.1 below), appurtenant to the Benny's Parcel, for vehicular parking upon the parking lot(s) constructed from time-to-time on the Parking Tract 3, as the same exist and/or are modified from time to time, subject to the requirements of applicable law and the terms, provisions and conditions hereof; and

(iii) an exclusive easement, appurtenant to the Benny's Parcel, for the encroachment of any and all existing building and/or other non-parking lot related improvements that currently encroach onto Parking Tract 3 from the Benny's Parcel, as the same currently exist and any replacements thereof from time to time; provided, however, that any replacements thereof shall not be permitted to encroach to any greater extent onto Parking Tract 3 than as such encroachments exist as of the Effective Date of this Agreement (the easements described in clauses (i), (ii) and (iii) of this Section 3.3 being collectively referred to herein as, the "**Benny's Easements**").

TO HAVE AND TO HOLD the Benny's Easements, together with all and singular the rights and appurtenances thereunto belonging unto respective grantee, its successors and assigns,

and each Owner of the Rackspace Parcel does hereby bind itself and its successors, to warrant and forever defend the Benny's Easements unto each respective grantee, its successors and assigns, against all persons whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under each Owner of the Rackspace Parcel but not otherwise.

The Owner of the Benny's Parcel shall have the right, at its sole cost and expense, to modify the configuration of the parking areas located on the Parking Tract 3, subject to the prior written consent of the Owner of the Rackspace Parcel (such consent not to be unreasonably withheld, conditioned or delayed) as to any material and substantial reconfiguration and as to the detailed plans and specifications and timeline therefor. The curb cut connecting into the Access Road, in the locations depicted upon the Site Plan as "Curb Cut C", shall not be modified, without the prior written consent of the Owner of the Rackspace Parcel and the Owner of the Benny's Parcel.

Subject to the foregoing requirements, the Owner of the Benny's Parcel shall have the right, without the consent of the Owner of the Rackspace Parcel, to add additional parking stops, directional signage, light standards, safety features, and other surface parking improvements or traffic control improvements whether or not required by applicable law to Parking Tract 3, so long as any such additions do not otherwise modify the configuration of the foregoing described Parking Tract 3 and/or Curb Cuts, and otherwise comply with the purposes for which the foregoing easements are granted; provided that any material and substantial reconfigurations of the parking areas on Parking Tract 3 shall require the prior written consent of the Owner of the Rackspace Parcel, such consent not to be unreasonably withheld, conditioned or delayed.

The Applebee's Easements, Olive Garden Easements, and Benny's Easements are sometimes collectively referred to herein as the "**Parking and Access Easements**". Such Parking and Access Easements shall all be perpetual and shall run with the land and burden the Parking Tracts 1, 2-A, 2-B and 3 for the benefit of each applicable Outparcel, subject to the terms and conditions hereof.

3.4 **Easement –Access Road**. The Owner of the Rackspace Parcel, as the Owner of the Access Road, does hereby GRANT, SELL and CONVEY unto the Owner of each Outparcel, for the benefit of the Owner of each Outparcel and its respective Occupants and Permittees, a non-exclusive easement, appurtenant to each Outparcel, for ingress and egress by vehicular and pedestrian traffic to and from each Outparcel and/or Parking Tract over, upon and across Access Road (as it exists and is reconfigured and reconstructed from time to time) and to and from all curb cuts connecting each Outparcel and/or Parking Tract to the Access Road in the locations depicted upon the Site Plan as the same exist and/or are modified from time to time, subject to the requirements of applicable law and the terms, provisions and conditions hereof (the "**Access Road Easement**"). The term of the Access Road Easement shall commence upon the Completion Date and shall automatically terminate upon the dedication of the Access Road to the City of Windcrest or other applicable governmental authority for use by the public as a public right-of-way.

TO HAVE AND TO HOLD the Access Road Easement, together with all and singular the rights and appurtenances thereunto belonging unto respective grantee, its successors and assigns, and each Owner of the Rackspace Parcel does hereby bind itself and its successors, to warrant and forever defend the Access Road Easement unto each respective grantee, its

successors and assigns, against all persons whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under each Owner of the Rackspace Parcel but not otherwise.

3.5 **Intentionally omitted**.

3.6 **Limitations on Parking and Access Easements**. Nothing contained in this Agreement shall be construed as granting to any Owner of an Outparcel and/or their respective Occupants and Permittees (i) any right to park upon the Rackspace Parcel or any other property, other than Parking Tract 1, Parking Tract 2-A, Parking Tract 2-B and Parking Tract 3, as more particularly set forth above and subject to the terms, provisions and conditions hereof; (ii) any right to access any other portion of the Rackspace Parcel or any other property, other than Parking Tract 1, Parking Tract 2-A, Parking Tract 2-B and Parking Tract 3 and the Access Road (via the curb cuts specified above), subject to the terms, provisions and conditions hereof; (iii) the right to construct buildings or any other structures not consistent with the use thereof as a parking lot on Parking Tract 1, Parking Tract 2-A, Parking Tract 2-B or Parking Tract 3 or any other portion of the Rackspace Parcel.

3.7 **Construction of the Access Road, Curb Cuts, Landscape Buffer and Parking Tracts**. Windcrest shall construct, or cause to be constructed and completed, lien-free and at its sole cost and expense, and in compliance with all governmental requirements (without causing any code or regulation changes that would adversely affect any of the Outparcels), and shall cause to be open and ready for use by all Outparcel Owners and Occupants, and their respective Permittees on or before June 21, 2013, subject to extension for events of force majeure (the **"Completion Date"**), the following improvements, substantially in accordance with Plans and Specifications described on the attached **Exhibit I** (the **"Construction Work"**)(provided, however, that to the extent of any conflict between **Exhibit I** and **Exhibit F-1, F-2, F-3 and F-4** the latter shall control with respect to the Parking Tracts):

(i) The Access Road, a publicly dedicated street in the City of Windcrest, Texas, in approximately the location depicted on the Site Plan, together with City of Windcrest-required and -approved lighting along the Access Road;

(ii) Curb Cuts A, A-1, B, B-1 and C, connecting the Parking Tracts to the Access Road, in approximately the locations depicted on the Site Plan (specifically to be constructed to accommodate left and right turn lanes for vehicular traffic to and from each curb cut, provided that specifically designated turn lanes shall not be designated);

(iii) Widening of the portion of the Access Road between the Applebee's Parcel and the Olive Garden Parcel, extending from the IH-35 Frontage Road to the T intersection with the remaining portion of the Access Road, including a pedestrian crosswalk across the Access Road adjacent to Curb Cuts A-1 and B-1.

(iv) A landscape buffer along the Access Road, including, but not limited to, on the portions of the Parking Tracts bounding the Access Road, in the locations depicted on the Site Plan as "Landscape Buffer" (the "**Landscape Buffer**"); and

(v) Construction and installation of code-compliant parking lots on the Parking Tracts of a similar quality and condition as exist adjacent to the Outparcels as of the Effective Date hereof and as follows: (a) removal of all existing curbing and wheel stops, if any, from the existing configuration of the parking areas thereon, (b) filling, leveling and resurfacing, if necessary, of areas where such existing curbing and wheel stops are removed to the same level as the remainder of the existing parking lot thereon, (c) re-curbing, slurrycoating, restriping, and replacing of wheel stops in the parking lot to reconfigure the parking spaces thereon to substantially comply with the parking layouts shown on **Exhibit F-1, F-2, F-3 and F-4** attached hereto and made a part hereof for all purposes (the "Parking Layouts"), (d) installation of lighting along the boundary of the Access Road, in the locations depicted on **Exhibit F-1, F-2, F-3 and F-4** (provided that (i) the twelve (12) lights on six (6) light poles depicted on the Parking Tracts and the western boundary of the Access Road shall be two-way lights that illuminate both the Access Road and the adjacent Parking Tracts and (ii) the lighting shall provide a level of illumination equal to or better than the standard provided in the "Luminaire Schedule" on **Exhibit F-1, F-2, F-3 and F-4**), (e) repair (if necessary) of any existing lighting on Parking Tract 1 to insure the same is in good working order on the Completion Date.

After the lien-free, code-compliant completion of the Parking Tracts in accordance with **Exhibit F-1, F-2, F-3 and F-4**, the Owner(s) of each applicable Outparcel acknowledge and agree, on behalf of themselves and their respective Occupants, that Windcrest and Rackspace shall have no liability arising from the configuration of the Parking Layouts and Rackspace and Windcrest make no representation or warranty whatsoever, express or implied, that the Parking Layouts facilitate adequate flow of traffic within the Parking Tracts or to and from the Outparcels and the Access Road.

(vi) The undersigned, the City of Windcrest, in its capacity as the governmental authority charged with regulating the same, agrees that the Outparcels are currently in compliance with Windcrest zoning, planning, platting, and building codes and regulations, and that the Construction Work will not result in any requirement to be placed on the part of any Owner of an Outparcel to upgrade, change, or replat its Outparcel in any manner whatsoever, or to perform any new construction work relative to its Outparcel in order to become code/regulation compliant, as a result of the Construction Work.

In connection with all Construction Work to be performed under this Section 3.7, Windcrest and Rackspace shall diligently pursue the same to completion and use their reasonable efforts to minimize any material disturbances and disruptions to the Occupants and Permittees of the Outparcels; provided, however that the parties acknowledge and agree that, despite such efforts, there may be unavoidable temporary periods during such Construction Work when the previously-existing access and parking may not be open and available to all Outparcel Owners and Occupants, and their respective Permittees. During any such closures of the previously-existing access and parking areas, each Outparcel shall utilize its respective access directly to the IH-35 Frontage Road and/or Walzem Road, as applicable, and reasonable and convenient replacement parking provided by Rackspace and Windcrest on the Rackspace Parcel, in addition to the parking areas on each respective Outparcel. Notwithstanding the foregoing, at no time shall the portion of the Access Road that runs between the Applebee's Parcel and the Olive Garden Parcel and provides access from the I-35 Frontage Road to the Applebee's Parcel and the Olive Garden Parcel be closed or

materially impaired without Rackspace and Windcrest providing reasonably convenient alternate access to and from such Parcels and the I-35 Frontage Road. During the Construction Work, Windcrest and Rackspace shall deliver to all Outparcel Owners and Occupants notice of any anticipated access and/or parking closures and/or impairments, and showing the temporary alternate access and parking arrangements available to the Outparcels' Occupants and Permittees to mitigate same. Windcrest and the Rackspace shall regularly communicate with all Outparcel Occupants regarding updates to the foregoing, including projected timelines for any anticipated closures and or inconveniences, and shall confirm to such parties that all such alternate access and parking described above is available to all affected Outparcel Owners and Occupants, and their respective Permittees, before it permits any such closures of the previously-existing access and parking areas to occur.

Within sixty (60) days after the Completion Date, Windcrest and Rackspace shall cause to be prepared and recorded, an amendment to this Agreement ("**Amendment**") (i) attaching the final legal descriptions, as reasonably approved by the Owners of the Outparcels, of the Access Road, each Parking Tract, the Applebee's Monument Sign Area, and the Olive Garden Monument Sign Area, and (ii) attaching an update Site Plan and Detailed Site Plans matching the foregoing legal descriptions, and showing the final Parking Layouts and the exact locations of the Curb Cuts and Landscape Buffer, as constructed.

3.8 **Easement for Pre-Existing Utilities**. The Owner of each Parcel within the Property does hereby GRANT, SELL and CONVEY to each other Owner of each Parcel within the Property, for the benefit of each such Owner and its respective Occupants and Permittees, a non-exclusive easement, appurtenant to each Parcel within the Property, for the maintenance and operation of any utility lines that currently exist on any Parcel within the Property and serve another Parcel within the Property as of the date of this Agreement (if any), including any similarly convenient replacements thereof in the event of condemnation or casualty; TO HAVE AND TO HOLD the foregoing utility easement, together with all and singular the rights and appurtenances thereunto belonging unto respective grantee, its successors and assigns, and each respective grantor does hereby bind itself and its successors, to warrant and forever defend the foregoing utility easement unto each respective grantee, its successors and assigns, against all persons whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under each respective grantor but not otherwise.

3.9 **Permitted Exceptions**. The easements described herein are conveyed and reserved subject only to the restrictions, easements, utility lines, or other matters or easements affecting the Property as specified described on **Exhibit J** attached hereto (collectively, the "**Permitted Exceptions**"). All other rights of Windcrest, Rackspace (including, but not limited to those under the Rackspace Lease), and of any mortgage loans or deeds of trust now or hereafter obtained by either Windcrest or Rackspace, secured in whole or in part by any portion of the Parking Tracts and/or the Property, shall be subject to and subordinate to this Agreement.

3.10 **Retention of Ownership**. Subject to the terms, provisions, conditions and superior exclusive easement and use rights herein conveyed and described, Windcrest and Rackspace herein retain, reserve and shall continue to enjoy fee ownership and leasehold ownership, as applicable, and the surface and subsurface, of its dominant fee and leasehold estate in the Rackspace Parcel, as

applicable, including easement areas, for any and all purposes which do not unreasonably interfere with and prevent the use of the Parking and Access Easements as created and set forth herein, and for the benefit of itself, and its respective successors and assigns, the right to use the surface and subsurface of portions of the Rackspace Parcel for any purpose (provided that any use of the Parking Tracts by Windcrest and/or Rackspace shall be limited to pre-existing utilities as set forth in Section 3.8 above), including as may be reasonably necessary for the installation, operation, maintenance, repair, replacement, removal and relocation of underground storm sewer lines, sanitary sewer pipes, water and gas mains, electric power lines, telephone and cable T.V. lines, and other like uses (collectively "**Utilities**") which do not unreasonably interfere with and prevent the use of the Parking and Access Easements; provided that any damage caused by Rackspace or Windcrest to any part of the Parking Tracts (or any of the improvements thereon) in the conduct of any such activity shall be repaired (or replaced) at the sole cost and expense of Windcrest or Rackspace as soon as reasonably possible to the condition existing prior to the conduct of any such activity.

3.11 **No Further Encumbrances-Parking Tracts/Outparcels.** It is agreed that Rackspace and/or Windcrest, after the Effective Date hereof, shall not further encumber the Parking Tracts and/or Olive Garden Monument Sign Area and/or Applebee's Monument Sign Area in any manner whatsoever, without prior written consent of the applicable Outparcel Owners.

ARTICLE 4.

Maintenance and Repair.

4.1 **Maintenance and Repair of the Access Road and Landscape Buffers**. The Owner of the Rackspace Parcel shall maintain and repair or cause to be maintained and repaired, at its sole cost and expense, the Access Road, so as to keep improved portions of the Access Road, as may exist from time-to-time, at all times open and operational and in a safe, sightly, good and functional condition to the same or similar standard as the other public streets serving the Rackspace Parcel; provided, however, that (i) nothing contained herein shall be deemed to obligate Rackspace to construct any new improvements on the remainder of the Rackspace Parcel and/or redevelop the remainder of the Rackspace Parcel (or any portion thereof); and (ii) Rackspace shall dedicate the Access Road to the City of Windcrest or other applicable governmental entity, whereupon such maintenance and repair obligations shall be transferred to the appropriate governmental entity.

The Owner of the Rackspace Parcel shall also maintain and repair or caused to be maintained or repaired, at its sole cost and expense, in a sightly and well kept manner, all Landscape Buffers, including, but not limited to, any portion of any Landscape Buffer on any of the Parking Tracts. The landscaping installed and maintained in the Landscape Buffers shall be routinely maintained in a safe, sightly, well kept and neat manner, and so that no landscaping elements materially block the visibility of any buildings on the Outparcels, signage on any Outparcel, or signage on any signage area or easement described herein.

Notwithstanding anything herein to the contrary, the Owner of the Rackspace Parcel, its Occupants, Permittees and their respective employees, agents, or independent contractors shall have

the right to ingress and egress across reasonable portions of the Parking Tracts to perform its maintenance obligations under this Section 4.1; provided that the Owner of the Rackspace Parcel shall hold harmless, indemnify and defend each Outparcel Owner, and their Occupants and respective Permittees, against any claims resulting from any such entry on to the Parking Tracts pursuant to this Section 4.1.

4.2 **Maintenance and Repair of Parking Tracts and Curb Cuts.**

(i) From and after the Completion Date, the Owner of the Applebee's Parcel shall (a) cause to be maintained and repaired, at its sole cost and expense, Parking Tract 1, excluding the portion of the Landscape Buffer located thereon, but including its monument sign on the Applebee's Monument Sign Area and Curb Cuts A and Curb Cut A-1, so as to keep improved portions of the same, as may exist from time-to-time, at all times in a safe, sightly, good and functional condition to the same standard as the driveways, parking areas, and improvements on the remainder of the Rackspace Parcel, (b) insure Parking Tract 1 in accordance with Article 6 below, and (c) beginning on the date upon which ad valorem taxes are assessed against Parking Tract 1 (but not earlier than the date that Rackspace begins paying ad valorem taxes under the Rackspace Lease on the remainder of the Rackspace Parcel other than the Parking Tracts and the Access Road), pay all ad valorem taxes assessed as to Parking Tract 1 after such date (if and when the same become due and payable), as if the Owner of the Applebee's Parcel was in fact the Owner of Parking Tract 1 (for ad valorem tax purposes only).

(ii) From and after the Completion Date, the Owner of the Olive Garden Parcel shall (a) cause to be maintained and repaired, at its sole cost and expense, Parking Tract 2-A, excluding the portion of the Landscape Buffer located thereon, but including its monument sign on the Olive Garden Monument Sign Area and Curb Cut B and Curb Cut B-1, so as to keep improved portions of the same, as may exist from time-to-time, at all times in a safe, sightly, good and functional condition to the same standard as the driveways, parking areas, and improvements on the remainder of the Rackspace Parcel, (b) insure Parking Tract 2-A in accordance with Article 6 below, and (iii) beginning on the date upon which ad valorem taxes are assessed against Parking Tract 2-A (but not earlier than the date that Rackspace begins paying ad valorem taxes under the Rackspace Lease on the remainder of the Rackspace Parcel other than the Parking Tracts and the Access Road), pay all ad valorem taxes on Parking Tract 2-A (if and when the same become due and payable), as if the Owner of the Olive Garden Parcel was in fact the Owner of Parking Tract 2-A (for ad valorem tax purposes only).

(iii) From and after the Completion Date, the Owner of the Olive Garden Parcel shall (a) cause to be maintained and repaired, at its sole cost and expense, Parking Tract 2-B, excluding the portion of the Landscape Buffer located thereon and Applebee's Monument Sign Area thereon, so as to keep improved portions of the same, as may exist from time-to-time, at all times in a safe, sightly, good and functional condition to the same standard as the driveways, parking areas, and improvements on the remainder of the Rackspace Parcel, (b) insure Parking Tract 2-B in accordance with Article 6 below, and (c) beginning on the date upon which ad valorem taxes are assessed against Parking Tract 2-B (but not earlier than the date that Rackspace begins paying ad valorem taxes under the Rackspace Lease on the remainder of the Rackspace Parcel other than the Parking Tracts and the Access Road), pay all ad valorem taxes on Parking Tract 2-B (if and when

the same become due and payable), as if the Owner of the Olive Garden Parcel was in fact the Owner of Parking Tract 2-B (for ad valorem tax purposes only).

(iv) From and after the Completion Date, the Owner of the Benny's Parcel shall (a) cause to be maintained and repaired, at its sole cost and expense, Parking Tract 3, excluding the portion of the Landscape Buffer located thereon, but including Curb Cut C, so as to keep improved portions of the same, as may exist from time-to-time, at all times in a safe, sightly, good and functional condition to the same standard as the driveways, parking areas, and improvements on the remainder of the Rackspace Parcel, (b) insure Parking Tract 3 in accordance with Article 6 below, and (c) beginning on the date upon which ad valorem taxes are assessed against Parking Tract 3 (but not earlier than the date that Rackspace begins paying ad valorem taxes under the Rackspace Lease on the remainder of the Rackspace Parcel other than the Parking Tracts and the Access Road), pay all ad valorem taxes on Parking Tract 3 (if and when the same become due and payable), as if the Owner of the Benny's Parcel was in fact the Owner of Parking Tract 3 (for ad valorem tax purposes only).

4.3 **Maintenance and Repair of Rackspace Sign Parcel**. The Outparcel Owners acknowledge that, following the dedication of the Access Road, the Owner of the Rackspace Parcel shall continue to own that certain sign parcel located between the Access Road and the Applebee's Parcel, depicted on the Site Plan as "Rackspace Sign Parcel". The Owner of the Rackspace Parcel agrees that the Rackspace Sign Parcel shall only be used for landscaping and for operating and maintaining the existing monument sign thereon (the "**Existing Monument Sign**"), which currently contains directional signage. The Owner of the Rackspace Parcel agrees to maintain and repair or caused to be maintained or repaired, at its sole cost and expense, in a sightly and well kept manner, the Rackspace Sign Parcel, including, but not limited to, maintaining any landscaping located thereon in a safe, sightly, well kept and neat manner according to the same standards set forth in Section 4.1 herein for Landscape Buffers, and maintaining the Existing Monument Sign in its current condition, unless the Owner of the Rackspace Parcel elects to remove such Existing Monument Sign and replace same with landscaping. In addition, in the event that the Owner of the Rackspace Parcel elects, in its sole discretion, to remodel and/or upgrade the Existing Monument Sign (which shall only be done without materially increasing its size or height unless reasonably approved by the Owner of the Applebee's Parcel), then the Owner of the Rackspace Parcel shall also include thereon, at its sole cost and expense, directional signage for (i) parking for the Olive Garden Parcel and (ii) parking for the Applebee's Parcel.

ARTICLE 5.

Use Restrictions.

5.1 Prohibited Uses. No portion of the Property shall be use or occupied for the following uses:

(i) Any noise, vibration, litter, odor (obnoxious or toxic), dust, dirt or other activity which may constitute a public or private nuisance;

(ii) Any unusual firing, explosive or other damaging or dangerous hazards;

(iii) Any factory use, warehouse operation, processing or rendering plant, or any assembling, manufacturing, distilling, refining, smelting, industrial, agriculture, drilling or mining operation;

(iv) Any trailer court, mobile home park, lot or showroom for sale of new or used motor vehicles, trailers or mobile homes, labor camp, junk yard, stockyard or animal raising;

(v) Any dumping, disposal, incineration or reduction of garbage or refuse other than handling or reducing such waste if produced on the premises from authorized uses and if handled in a reasonably clean and sanitary manner;

(vi) Any commercial laundry or dry cleaning plant, or laundromat; provided, however, that a facility for drop-off and pick-up of dry cleaning and laundry that is dry-cleaned or laundered off-site shall be permitted; and provided, further, that the foregoing prohibition shall not apply to a laundry facility on the Rackspace Parcel that is for the primary purpose of serving employees;

(vii) Any automobile, truck, trailer or other motor vehicle body, fender or other repair work;

(viii) Any automobile, truck, trailer or other motor vehicle painting or customizing work;

(ix) Any cemetery, mortuary or crematorium;

(x) Any pool or billiard. Establishment, amusement center or game room, bowling alley, amusement park or gallery, carnival, sporting event or other sports activity or shooting gallery; provided that use as a pool or billiard establishment, amusement center or game room shall not be prohibited if conducted as an integral portion of a restaurant;

(xi) Any second hand store, surplus store or flea market;

(xii) Any drug rehabilitation center, "halfway" house or massage parlor;

(xiii) Any so-called "off-track betting" operation; or

(xiv) Any sale or display of pornographic materials, adult book store, or adult entertainment use or any other manner or use which is inconsistent with a family entertainment center and retail destination.

ARTICLE 6.

Insurance and Indemnity

6.1 **Insurance**. From and after the Completion Date, each Owner of an Outparcel shall maintain, or cause to be maintained, as to its respective appurtenant Parking Tract and each signage

easement area located therein (i.e., the Applebee's Parcel Owner for Parking Tract 1 and the Applebee's Monument Sign Area, the Olive Garden Parcel Owner for Parking Tract 2-A, Parking Tract 2-B, and the Olive Garden Monument Sign Area, and the Benny's Parcel Owner for Parking Tract 3), public liability insurance insuring against claims on account of lost life, bodily injury or property damage that may arise from, or be occasioned by the condition, use or occupancy of its respective Outparcel and its respective Parking Tract(s) described herein, or caused by such Owner, its Occupants, and the respective Permittees of such Owner and Occupant or caused by those persons for whose acts and omissions such Owner, its Occupants, and their respective Permittees are legally liable. Each Owner of an Outparcel shall each obtain insurance policies, according to the provisions hereof, covering its respective Outparcel and its respective Parking Tract(s) described herein from a reputable insurance company or companies qualified to do business in the State of Texas; and each such policy of insurance shall have limits for bodily injury and property damage in amounts of $3,000,000.00 per occurrence and $3,000,000.00 in the aggregate. Such insurance may be carried under a "blanket" policy or "blanket" policies covering other properties of each respective party, and may be subject to such self-insured retentions as a Party may desire. Each Owner of an Outparcel shall, upon written request from Rackspace, furnish to Rackspace one or more certificates of insurance evidencing the existence of the insurance required above. With respect to the right of the Olive Garden Parcel Owner, its Occupants, and their respective Permittees to use Parking Tract 1 in accordance with Section 3.2 above, the Owner of the Applebee's Parcel shall name the Owner, and any Occupants and Lenders, of the Olive Garden Parcel, as additional insured parties on insurance policies obtained by it in compliance with the foregoing insurance requirements pertaining to Parking Tract 1. All insurance policies required in this paragraph shall contain provisions which include Rackspace as an "additional insured".

The Owner of the Rackspace Parcel agrees that, until such time as the Access Road is dedicated to the public, it will maintain, or cause to be maintained, as to the Access Road, public liability insurance insuring against claims on account of lost life, bodily injury or property damage that may arise from, or be occasioned by the condition, use or occupancy of the Access Road, or caused by such Owner, its Occupants, and the respective Permittees of such Owner and Occupant or caused by those persons for whose acts and omissions such Owner, its Occupants, and their respective Permittees are legally liable. The Owner of the Rackspace Parcel shall obtain insurance policies, according to the provisions hereof, covering the Access Road from a reputable insurance company or companies qualified to do business in the State of Texas; and each such policy of insurance shall have limits for bodily injury and property damage in amounts of $3,000,000.00 per occurrence and $3,000,000.00 in the aggregate. Such insurance may be carried under a "blanket" policy or "blanket" policies covering other properties of each respective party, and may be subject to such self-insured retentions as a Party may desire. The Owner of the Rackspace Parcel shall, upon written request from any Owner of an Outparcel, furnish to such Owner one or more certificates of insurance evidencing the existence of the insurance required above. All insurance policies required in this paragraph shall contain provisions which include GVD and MM2 each as an "additional insured".

6.2 **Indemnities**.

(i) GVD and MM2 ("**Indemnitor**") agree to indemnify, defend, and hold harmless the Rackspace Parcel Owner from and against any loss, cost, damage, attorneys' fees, expenses, or claims, actual or threatened, except to the extent caused by the gross negligence or

willful misconduct of the Owner of the Rackspace Parcel, its Occupants and any Permittees, arising from (i) injury to person or property occurring on an Outparcel's appurtenant Parking Tract(s) (i.e., the Applebee's Parcel Owner for Parking Tract 1, the Olive Garden Owner for Parking Tract 2-A and Parking Tract 2-B, and the Benny's Parcel Owner for Parking Tract 3) attributable to the use by such Owner of an Outparcel, its Occupants and their respective Permittees of the Parking and Access Easements from and after the Completion Date, and/or (ii) a breach or default of any provision of this Agreement by such Owner of an Outparcel.

(ii) From and after the Completion Date, the Owner of the Olive Garden Parcel agrees to indemnify, defend, and hold harmless the Owner of the Applebee's Parcel, its Occupants and Permittees, from and against any loss, cost, damage, attorneys' fees, expenses, or claims, actual or threatened, except to the extent caused by the gross negligence or willful misconduct of the Owner of the Applebee's Parcel, its Occupants and any Permittees, arising from (i) injury to person or property occurring on the Parking Tract 1 attributable to the use by the Owner of the Olive Garden Parcel, its Occupants and their respective Permittees of Parking Tract 1 as permitted by Section 3.2(ii) herein, but only to the extent not covered by the insurance required to be maintained by the Owner of the Applebee's Parcel for Parking Tract 1 pursuant to Section 6.1 herein. From and after the Completion Date, the Owner of the Applebee's Parcel agrees to indemnify, defend, and hold harmless the Owner of the Olive Garden Parcel, its Occupants and Permittees, from and against any loss, cost, damage, attorneys' fees, expenses, or claims, actual or threatened, except to the extent caused by the gross negligence or willful misconduct of the Owner of the Olive Garden Parcel, its Occupants and any Permittees, arising from (i) injury to person or property occurring on the Parking Tract 1 attributable to the use by the Owner of the Applebee's Parcel, its Occupants and their respective Permittees of Parking Tract 1.

(iii) From and after the Completion Date, the Owner of the Applebee's Parcel agrees to indemnify, defend, and hold harmless the Owner of the Olive Garden Parcel, its Occupants and Permittees, from and against any loss, cost, damage, attorneys' fees, expenses, or claims, actual or threatened, except to the extent caused by the gross negligence or willful misconduct of the Owner of the Olive Garden Parcel, its Occupants and any Permittees, arising from (i) injury to person or property occurring on the Parking Tract 2-B attributable to the use by the Owner of the Applebee's Parcel, its Occupants and their respective Permittees of Parking Tract 2-B as permitted by Section 3.1(i) herein, but only to the extent not covered by the insurance required to be maintained by the Owner of the Olive Garden Parcel for Parking Tract 2-B pursuant to Section 6.1 herein. From and after the Completion Date, the Owner of the Olive Garden Parcel agrees to indemnify, defend, and hold harmless the Owner of the Applebee's Parcel, its Occupants and Permittees, from and against any loss, cost, damage, attorneys' fees, expenses, or claims, actual or threatened, except to the extent caused by the gross negligence or willful misconduct of the Owner of the Applebee's Parcel, its Occupants and any Permittees, arising from (i) injury to person or property occurring on the Parking Tract 2-B attributable to the use by the Owner of the Olive Garden's Parcel, its Occupants and their respective Permittees of Parking Tract 2-B.

(iv) Until such time as the Access Road becomes a publicly dedicated street, Rackspace agrees to indemnify, defend, and hold harmless the Owner of each Outparcel from and against any loss, cost, damage, attorneys' fees, expenses, or claims, actual or threatened,

except to the extent caused by the gross negligence or willful misconduct of an Owner of an Outparcel, its Occupants and any Permittees, arising from (i) injury to person or property occurring on the Access Road attributable to the use by the Owner of the Rackspace Parcel, its Occupants and their respective Permittees, (ii) arising from injury to person or property occurring on the Parking Tracts prior to the Completion Date, and/or arising at any time from injury to person or property occurring on the Parking Tracts and/or the Outparcels themselves and attributable to the use by the Owner of the Rackspace Parcel, its Occupants and their respective Permittees, and/or (iii) a breach or default of any provision of this Agreement by the Owner of the Rackspace Parcel.

ARTICLE 7.

Remedies

7.1 **Self Help and Other Remedies**. If any Party or Person obligated hereunder defaults in the performance of its obligations hereunder (including, but not limited to, any default pertaining to the maintenance and repair obligations applicable to the Parking Tracts and Curb Cuts by the Owner of the Applebee's Parcel, the Owner of the Olive Garden Parcel, and/or the Owner of the Benny's Parcel as set forth in Section 4.2 herein), and the default is not cured within thirty (30) days following delivery of written notice to such defaulting Party (provided that said 30-day cure period is waived and not applicable if the default is of a nature so as to create an emergency affecting (a) the safety of any Person, (b) impending damage to any Property, or (c) the immediate denial of access to any Parking Tract or Property) then the non-defaulting Party or obligated Person shall have the right to (i) perform such obligation on behalf of the defaulting Party or Person, in which event such defaulting Party or Person shall reimburse such non-defaulting Party or Person for all amounts expended by the non-defaulting Party or Person on behalf of the defaulting Party, together with interest thereon at the lesser of twelve percent (12%) per annum, or the maximum amount permitted by law from the date the amounts are expended until the date repaid; and/or (ii) exercise any other rights or remedies available to the non-defaulting Party or Person either at law or in equity. Notwithstanding the foregoing, in the event of a breach or default by any Owner of an Outparcel or any Person in its performance of its obligations hereunder, in no event shall such default result in a termination of this Agreement, and/or any impairment of the Access Road Easement and/or any Parking and Access Easements benefitting any Outparcel, including, without limitation, the Outparcel of any defaulting Owner. Furthermore, in no event shall Windcrest or Rackspace have the right to cut off or impair any defaulting Party's access to the Access Road and/or any applicable Parking Tract(s) by erecting a fence or other barrier along the common boundary of the Rackspace Parcel and the applicable Outparcel(s) and/or their appurtenant Parking Tract(s).

7.2 **Injunctive Relief**. In the event of a breach by any party hereto of any obligation of such party under this Agreement, subject to the provisions of Section 7.1 above, the non-defaulting Party shall be entitled to injunctive relief mandating compliance herewith, and shall be entitled to obtain a decree specifically enforcing the performance of the obligations created hereunder. The undersigned hereby acknowledge and stipulate the inadequacy of legal remedies and irreparable harm which would be caused by the breach of this Agreement, and such non-defaulting Party shall, subject to the provisions of Section 7.1 above, be entitled to relief by any and all other available legal and equitable remedies from the consequences of such breach. Any costs and reasonable

attorney's fees incurred in the preparation and prosecution of such action or proceeding shall be paid by the non-prevailing Party in any such action or proceeding.

7.3 **Non-Waiver**. No delay or omission of any party hereto in the exercise of any rights created hereunder shall impair such right, or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of an event of default hereunder. A waiver by any party hereto of a breach of, or default in, any of the terms and conditions of this Agreement by the other party shall not be construed to be a waiver of any subsequent breach thereof or of any other provision of this Agreement. Except as otherwise specifically provided in this Agreement, no remedy provided in this Agreement shall be exclusive, but instead all remedies shall be cumulative with all other remedies provided for in this Agreement and all other remedies at law or in equity which are available to the parties hereto.

ARTICLE 8.

Notices

8.1 **Notices**. All notices, demands, statements, and requests (collectively the "Notice") required or permitted to be given under this Agreement must be in writing and shall be deemed to have been properly given or served as of the date hereinafter specified: (i) on the date of personal service upon the Party to whom the notice is addressed or if such Party is not available the date such notice is left at the address of the Party to whom it is directed, (ii) on the date the notice is postmarked by the United States Post Office, provided it is sent prepaid, registered or certified mail, return receipt request, and (iii) on the date the notice is delivered by a courier services (including Federal Express, Express Mail, Lone Star or similar operation) to the address of the Party to whom it is directed, provided it is sent prepaid, return receipt requested. The address of the signatories to this Agreement is set forth below:

If to Rackspace:

Rackspace Hosting
Attn: General Counsel
5000 Walzem
San Antonio, Texas 78218
Telephone No.: 210-312-4700
Fax No.: 210-312-4848

With a copy to:

Steve Golden
Golden Steves Cohen & Gordon, LLP
300 Convent Street, Suite 2600
San Antonio, Texas 78205
Telephone No.: (210) 745 3700
Fax No.: (210) 745 3737

If to GVD: GVD Commercial Properties, Inc.
Attn: David A. Case, CFO
1915-A East Katella Avenue
Orange, CA 92867
Telephone No.: (714) 639-2131
Fax No.: (714) 633-9602

If to MM2: Monte Mac No. 2
Attn: David A. Case, CFO
1915-A East Katella Avenue
Orange, CA 92867
Telephone No.: (714) 639-2131
Fax No.: (714) 633-9602

ARTICLE 9.

General Provisions

9.1 **Binding Effect**. The Parties hereby agree that (i) the terms, provisions and conditions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective Permittees, as well as the successors and assigns of such Persons; and (ii) the easements and restrictive covenants shall be appurtenant to and for the benefit of all the Owners and their successors and assigns and shall run with the land for the time periods set forth herein. This Agreement shall be construed in accordance with the laws of the State of Texas and all obligations hereunder are performable in Bexar County, Texas. Rackspace's interest under this Agreement and its rights, obligations and duties hereunder, shall be fully assignable by Rackspace to any assignee of all or substantially all of the Rackspace's interest under the Rackspace Lease, or sublessee of all or substantially all of the Rackspace Parcel under the Rackspace Lease, but in no event shall Rackspace be released from any of its liabilities or obligations under this Agreement prior to the occurrence of the Completion Date. Upon the expiration or earlier termination of the Rackspace Lease, if Rackspace does not acquire the Rackspace Parcel, as more particularly set forth under its option to do so under the Rackspace Lease, then Rackspace shall no longer be deemed an Owner of the Rackspace Parcel, and its successor in interest as to the Rackspace Parcel shall thereafter be deemed the Rackspace Parcel Owner for all purposes hereunder. Further, it is agreed that any and all rights and/or options owned by Rackspace to acquire ownership of the Rackspace Parcel under the Rackspace Lease, or under any other agreements, shall be and remain expressly subordinate to the terms and conditions of this Agreement.

9.2 **Partial Invalidity**. If any term, covenant or condition of this Agreement or the application of it to any Person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant or condition to Persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and shall be enforced to the extent permitted by law.

9.3 **Captions**. The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants or conditions contained herein.

9.4 **Gender**. In construing the provisions of this Agreement and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

9.5 **Relationship of the Parties**. Nothing contained herein shall be construed to make the parties hereto partners or joint venturers, or render any of such parties liable for the debts or obligations of the other party hereto.

9.6 **Amendment**. This Agreement may be canceled, changed, modified or amended in whole or in part only by the written and recorded agreement of all then current Owners. In no event shall any amendment of this Agreement ever require the consent or joinder of any one or more of the agents, patrons, customers, employees, licensees or invitees of the Property.

9.7 **Term**. This Agreement and the easements, rights, obligations and liabilities created hereby shall encumber the Property for a period of fifty (50) years, or such lesser period if and to the extent a lesser period is required by applicable law, and thereafter the terms hereof shall be renewed automatically for successive ten (10) year periods unless all Owners and all parties owning at that time any security interest in any of the Parcels execute and record in the Bexar County, Texas, real estate records at any time a statement terminating this Agreement.

9.8 **No Dedication**. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property to the general public or for the general public or for any public purpose whatsoever, it being the intention that this Agreement shall be strictly limited to and for the purposes herein expressed. This Agreement is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not specifically benefited by the terms and provisions hereof, nor are any easement rights granted to a party hereunder assignable to any third party.

Notwithstanding the foregoing, (i) nothing contained in this Agreement shall prohibit the Rackspace Parcel Owner, or its successors, from dedicating all or any part of the Rackspace Parcel, including, without limitation, the Access Road, but excluding the Parking Tracts, to an appropriate governmental entity, the effect of which would create a public street on the Rackspace Parcel so dedicated, with maintenance and repair responsibilities transferring to the appropriate governmental entity, and (ii) nothing contained in this Agreement shall prohibit the Rackspace Parcel Owner, or its successors, from transferring all or any part of its maintenance and repair responsibilities hereunder to a property manager or a property owner's association, with maintenance and repair responsibilities transferring to the same, but the foregoing shall not relieve the Rackspace Parcel Owner from its obligations to cause the same to be performed as set forth herein.

9.9 **Outparcels Not Responsible For Costs**. Except as otherwise set forth herein and except for the fees of each party's attorneys, engineers, consultants engaged by each party which

shall be the responsibility of each respective party, in no event shall any Owner of a Outparcel be liable or responsible for the construction costs associated with the Construction Work prior to the Completion Date; provided, however that each Outparcel Owner shall be obligated to pay for certain post-Completion Date costs and expenses pertaining to the Parking Tracts, as specifically and expressly as set forth in Section 4.2 herein.

9.10 **Counterparts**. This Agreement may be executed in any number of counterparts and each such counterpart hereof shall be deemed to be an original instrument, but all of such counterparts shall constitute but one Agreement.

9.11 **Attorneys Fees**. In the event any legal action or proceeding for the enforcement of any right or obligations herein contained is commenced, the prevailing party in such action or proceeding shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

[Separate Signature Pages Follow]

EXECUTED to be effective as of the Effective Date.

RACKSPACE US, INC.
a Delaware corporation

By: _____
Name: _____
Title: _____

THE STATE OF TEXAS §
§
COUNTY OF _____ §

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, the _____ of Rackspace US, Inc., a Delaware corporation, on behalf of said corporation.

_____
Notary Public in and for
The State of Texas

[Signature Pages Continue]

GVD COMMERCIAL PROPERTIES, INC.
a California corporation

By: _____
Name: David A. Case
Title: CFO

STATE OF CALIFORNIA) SS
COUNTY OF ORANGE)

On _____, 2012, before me, _____ (Notary Public) personally appeared David A. Case, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

MONTE MAC NO. 2,
a California limited partnership

By: GVD Investments, Inc.,
a California corporation,
its General Partner

By: _____
Name: David A. Case
Title: CFO

STATE OF CALIFORNIA) SS
COUNTY OF ORANGE)

On _____, 2012, before me, _____ (Notary Public) personally appeared David A. Case, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

After recording return to:

Smita Bhakta
Golden Steves Cohen & Gordon, LLP
300 Convent Street, Suite 2600
San Antonio, Texas 78205

Joinder of Windcrest

Windcrest Economic Development Corporation ("**Windcrest**") is the fee simple owner of the Rackspace Parcel, which is leased by Windcrest to Rackspace pursuant to that certain Ground Lease Agreement dated August 2, 2007, as amended from time to time. Windcrest joins in the execution of this Agreement as the current fee simple owner of the Rackspace Parcel for the purpose of subjecting the Rackspace Parcel to the terms, provisions and conditions of this Agreement.

WINDCREST:

WINDCREST ECONOMIC DEVELOPMENT CORPORATION

By: _____
Name: _____
Title: _____

THE STATE OF TEXAS §
§
COUNTY OF _____ §

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, the _____ of Windcrest Economic Development Corporation, on behalf of said corporation.

_____
Notary Public in and for
the State of Texas

Joinder of Tenant
[Applebee's Parcel]

NEIGHBORHOOD RESTAURANT PARTNERS, LLC, a Delaware limited liability company ("Applebee's Tenant") is the tenant of the Applebee's Parcel, which is leased by MM2 to Applebee's Tenant pursuant to that certain Lease Agreement by and between MM2 and Applebee's Tenant, as amended from time to time. Applebee's Tenant joins in the execution of this Agreement as the current tenant of the Applebee's Parcel for the purpose of subjecting the Applebee's Parcel to the terms, provisions and conditions of this Agreement.

APPLEBEE'S TENANT:

NEIGHBORHOOD RESTAURANT PARTNERS, LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____

THE STATE OF _____ §
§
COUNTY OF _____ §

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, the _____ of **NEIGHBORHOOD RESTAURANT PARTNERS, LLC, a Delaware limited liability company**, on behalf of said limited liability company.

_____
Notary Public in and for
the State of _____

Joinder of Tenant
[Olive Garden Tenant]

DARDEN SW, LLC, a Florida limited liability company ("Olive Garden Tenant") is the tenant of the Olive Garden Parcel, which is leased by GVD to Olive Garden Tenant pursuant to that certain Lease Agreement by and between GVD and Olive Garden Tenant, as amended from time to time. Olive Garden Tenant joins in the execution of this Agreement as the current tenant of the Olive Garden Parcel for the purpose of subjecting the Olive Garden Parcel to the terms, provisions and conditions of this Agreement.

OLIVE GARDEN TENANT:

DARDEN SW, LLC,
a Florida limited liability company

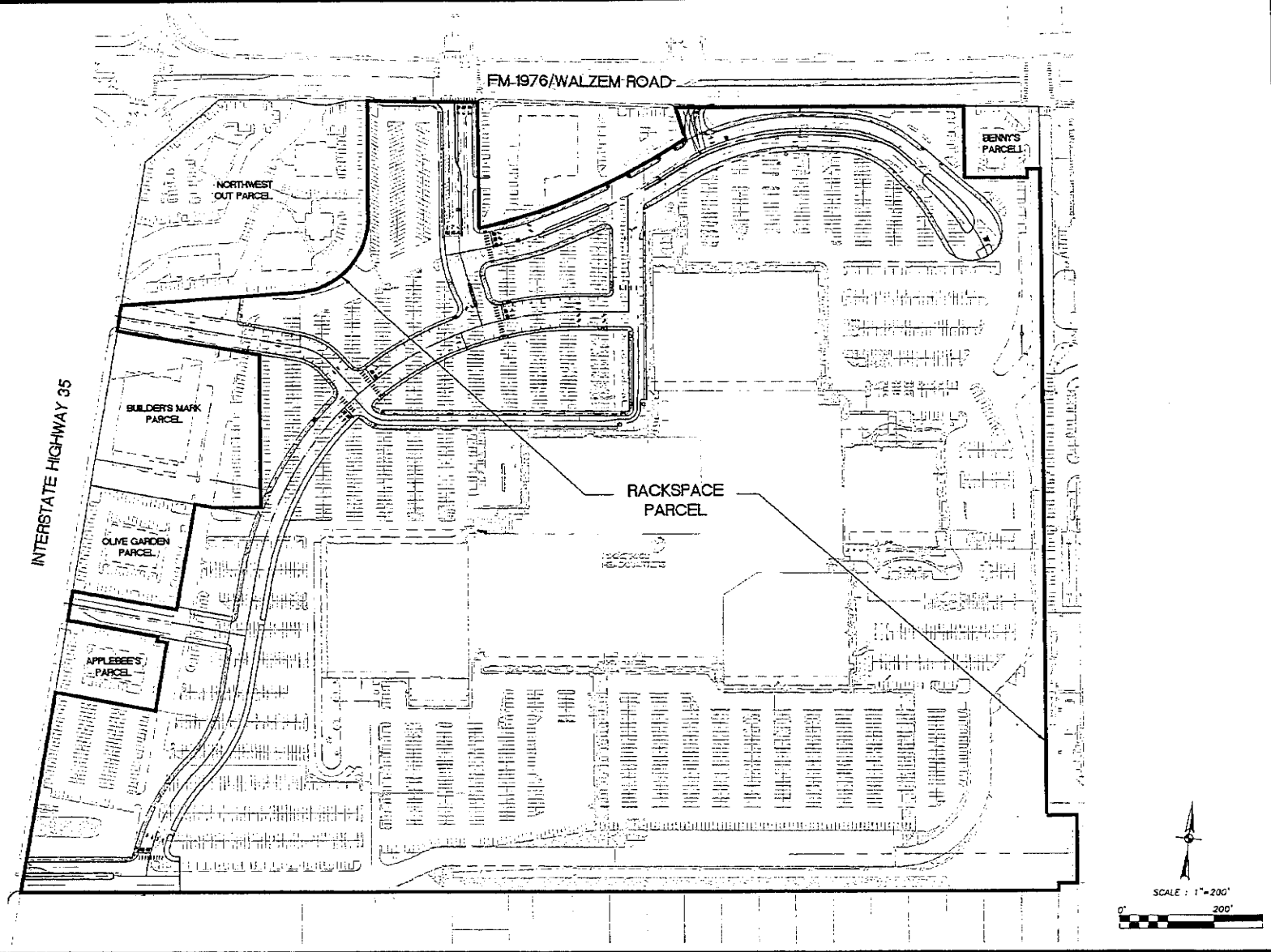
By: GMRI, Inc.,
Its Manager

By: _____
Name: _____
Title: _____

THE STATE OF _____ §
§
COUNTY OF _____ §

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, the _____ of **GMRI, Inc., the Manager of Darden SW, LLC, a Florida limited liability company**, on behalf of said corporation and limited liability company.

_____
Notary Public in and for
the State of _____



REVISIONS:

PAPE-DAWSON ENGINEERS

EXHIBIT 'A'
RACKSPACE PARCEL SITE PLAN

JOB NO. 6164-00
DATE FEBRUARY 2002
DESIGNED JM
CHECKED PM DRAWN RD
SHEET 1

EXHIBIT "A-1"

BEGINNING at a 3/4" iron rod found in the east line of Interstate Highway (IH) 35/ Loop 410 (R.O.W. Varies), also being the southwest corner of said Lot 44, and being the northwest corner of Lot 36, of the Replat of Toys "R" Us Subdivision, recorded in Volume 9520, Page 187, (D.P.R.B.C.T.), for the southwest corner and **POINT OF BEGINNING** hereof, from which a 4" Texas Department of Transportation (TXDOT) brass disk monument found in the east line of said IH 35/ Loop 410 at station 1882+00 and offset right 213.20', bears S09°56'18"W, a distance of 454.36 feet;

THENCE, with the east line of said IH 35/ Loop 410, same being the west line of said Lot 44, N09°56'18"E, a distance of 437.50 feet to 1/2-inch iron rod found for an angle point hereof, same being the southwest corner of Lot 45 of said Replat Establishing Simon Apple Garden;

THENCE, leaving the east line of said IH 35/ Loop 410, same being the west line of said Lot 44, with the common line between said Lots 44 and 45, the following five (5) courses and distances:

1) S80°21'18"E, a distance of 217.15 feet to a PK nail found for an angle point hereof, same being the southeast corner of said Lot 45, and a southeast corner of said Lot 44;
2) N10°05'00"E, a distance of 147.36 feet to a 1/2-inch iron rod found for an angle point hereof, same being a northeast corner for said Lot 45, also being an angle point for said Lot 44;
3) N80°16'37"W, a distance of 22.47 feet to a 1/2-inch iron rod found for an angle point hereof, same being an angle point for said Lots 44 and 45;
4) N09°43'58"E, a distance of 9.05 feet to a 1/2-inch iron rod found for an angle point hereof, same being a northeast corner for said Lot 45, also being an angle point for said Lot 44;
5) N80°08'26"W, a distance of 195.02 feet to a 1/2-inch iron rod found for an angle point hereof, same being the northwest corner of said Lot 45, also being an angle point of said Lot 44, same being a point in the east line of said IH 35/ Loop 410;

THENCE, with the east line of said IH 35/ Loop 410, same being the west line of said Lot 44, N09°56'18"E, a distance of 64.23 feet to a 1/2-inch iron rod with "Vickery" cap found for an angle point hereof, same being the southwest corner of Lot 46 of said Replat Establishing Simon Apple Garden, also being an angle point for said Lot 44;

THENCE, leaving the east line of said IH35/ Loop 410, same being the west line of said Lot 44, with the common line between said Lots 44 and 46, S80°07'28"E, a distance of 225.13 feet to a 1/2-inch iron found for an angle point hereof, same being the southeast corner of said Lot 46, also being an angle point for said Lot 44;

THENCE, continuing with the common line between said Lots 44 and 46, N09°56'34"E, a distance of 230.05 feet a 1/2-inch iron rod found for an angle point hereof, same being the northeast corner of said Lot 46, same being an angle point for said Lot 44;

THENCE, crossing through said Lot 24, S80°02'51"E, a distance of 37.96 feet to a PK nail found for an angle point hereof, same being an angle point for said 11.5384 acre tract, also being an angle point for said Lot 44;

THENCE, continuing through said Lot 24, with a north line of said 11.5384 acre tract, N89°45'32"E, a distance of 103.11 feet to a PK nail found for an angle point hereof, same being an angle point of said 11.5384 acre tract, said point lies within said Lot 24;

THENCE, continuing through said Lot 24, with a west line of said 11.5384 acre tract, N00°36'38"E, a distance of 327.41 feet to a PK nail found for an angle point hereof, same being an angle point of said 11.5384 acre tract, said point lies within said Lot 24;

THENCE, continuing through said Lot 24, with a south line of said 11.5384 acre tract, N80°48'25"W, a distance of 311.55 feet to a PK nail found for an angle point hereof, same being an angle point of said 11.5384 acre tract, and being a point in the west line of said Lot 24, also being a point in the east line of said IH35/ Loop 410;

THENCE, with the west line of said Lot 24, same being the east line of said IH 35/ Loop 410, N09°56'18"E, a distance of 54.60 feet to a 1/2-inch iron rod with "Doucet & Assoc," cap set for a northwest corner hereof, same being a northwest corner of said Lot 24, and the southwest corner of Lot 22 of the Simon Subdivision recorded in Volume 7300, Page 69, (D.P.R.B.C.T.);

THENCE, with the south line of said Lot 22, and the north line of said Lot 24, N85°26'50"E, a distance of 381.62 feet to a PK nail with "Brown" shiner found for a point of curvature (P.C.) hereof, same being a P.C. for said Lot 22, also being a northwest corner and P.C. of said Lot 25;

THENCE, continuing with the southeast line of said Lot 22, and with the northwest line of said Lot 25, along a curve to the left, whose radius is 159.75 feet, whose delta is 85°23'33", at an arc length of 238.09 feet, and overall chord which bears N42°47'06"E, a distance 216.66 feet to a 1/2-inch iron rod with

"Vickery" aluminum cap found for a point of tangency (P.T.) hereof, same being a P.T. for said Lots 22 and 25;

THENCE, continuing with the west line of said Lot 22, and the east line of said Lot 25, N00°05'45"E, a distance of 249.80 to a 1/2-inch iron rod with "Vickery" cap found for a northwest corner hereof, same being a northwest corner of said Lot 25, and a northeast corner of said Lot 22, same being a point in the south line of Walzem Road/ Farm to Market (FM) 1976 (R.O.W. Varies);

THENCE, with the south line of said Walzem Road/ FM 1976, and the north line of said Lot 25, N89°47'19"E, a distance of 112.39 feet to a Mag nail with "Brown" shiner found for an angle point hereof, same being an angle point for said Lot 25, also being an angle point for said Walzem Road/ FM 1976, from which a 4" Texas Department of Transportation (TXDOT) brass disk monument found bears, S76°06'59"W, a distance of 1.29 feet;

THENCE, continuing with the south line of said Walzem Road/ FM 1976, and the north line of said Lot 25, S88°27'18"E, a distance of 120.88 feet to a Mag nail with "Doucet" washer set for an angle point hereof;

THENCE, leaving the south line of said Walzem Road/ FM 1976, same being the north line of said Lot 25, passing through said Lot 25 the next four (4) courses and distances:

1) S00°17'20"E, distance of 268.51 feet to a Mag nail with "Doucet" washer set for an angle point hereof;
2) Along a curve to the right, whose radius is 921.48 feet, whose delta is 01°33'47"", whose arc length is 25.14 feet, and whose chord bears N77°14'29"E, a distance of 25.14 feet to a Mag nail with "Doucet" washer set for a point of reverse curvature (P.R.C.) hereof;

3) Along a curve to the left, whose radius is 750.00 feet, whose delta is 09°26'18", whose arc length is 123.55 feet, and whose chord bears N73°18'14"E, a distance of 123.41 feet to a Mag nail with "Doucet" washer set for a point of compound curvature (P.C.C.) hereof;
4) Along a curve to the left, whose radius is 2010.40 feet, whose delta is 03°54'26", whose arc length is 137.10' feet, and whose chord bears N66°37'52"E, a distance of 137.07 feet to a Mag nail with "Doucet" washer set for a point of compound curvature (P.C.C.) hereof;

THENCE, continuing through said Lot 25, and in part through said Lot 44, along a curve to the left, whose radius is 500.00 feet, whose delta is 10°19'44", at an arc length of 14.77 feet passing the common line between said Lots 25 and 44, for an overall arc length of 90.14 feet, and whose overall chord bears N59°30'47"E, a distance of 90.02 feet to a Mag nail with "Doucet" washer set for a P.R.C. hereof, said point lies within said Lot 44;

THENCE, continuing in part through said Lot 44, and through said Lot 38, along a curve to the right, whose radius is 500.00 feet, whose delta is 11°52'41", at an arc length of 3.44 feet passing the common line between said Lots 44 and 38, for an overall arc length of 103.66 feet, and whose overall chord bears N60°17'16"E, a distance of 103.47 feet to a Mag nail with "Doucet" washer set for a P.T. hereof, said point lies in said Lot 38;

THENCE, continuing through said Lot 38, N16°51'51"W, a distance of 69.10 feet to a PK nail with "Brown" shiner found for an angle point hereof, same being a point in the south line of said Walzem Road/ FM 1976, also being the northern most northwest corner of said Lot 38, and the northeast corner of said Lot 44;

THENCE, with the south line of said Walzem Road/ FM 1976, same being the north line of said Lot 38, N89°44'36"E, a distance of 592.04 feet to a 1/2-inch iron rod with "Vickery" aluminum cap found for an angle point hereof, same being an angle point in the south line of said Walzem Road/ FM 1976, and an angle point in the north line of said Lot 38;

THENCE, continuing with the south line of said Walzem Road/ FM 1976, same being the north line of said Lot 38, N88°28'52"E, a distance of 17.99 feet to a "X" cut in concrete for the northern most northeast corner hereof, same being the northern most northeast corner of said Lot 38, also being the northwest corner of Lot 39 of said Replat of Subdivision Plat of Simon Subdivision,

THENCE, leaving the south line of said Walzem Road/ FM 1976, with the common line between said Lots 38 and 39 the following four (4) courses and distances:

1) S00°16'05"E, a distance of 151.24 feet to a 1/2-inch iron rod with "Vickery" aluminum cap found for an angle point hereof, same being the southwest corner of said Lot 39, and an angle point for said Lot 38;
2) N89°45'07"E, a distance of 131.79 feet to a 1/2-inch iron rod found for an angle point hereof, same being a southeast corner of said Lot 39, also being an angle point for said Lot 38;
3) N00°14'38"W, a distance of 18.06 feet to a 1/2-inch iron rod with "Vickery" cap found for an angle point hereof, same being an angle point for said Lots 38 and 39;

4) N89°37'31"E, a distance of 27.57 feet to a PK nail found for the eastern most northeast corner hereof, same being the eastern most southeast corner for said Lot 39, and the eastern most northeast corner of said Lot 38, also being a point in the west line of Lot 2, Block 1 of the Replat and Subdivision Plat Establishing Roosevelt High School Subdivision recorded in Volume 9566, Page 132, (D.P.R.B.C.T.);

THENCE, in part with the east line of Lot 38 and in part with the east line of Lot 37, both of said Replat of Simon Subdivision, and with the west line of Lot 2 of said Roosevelt High School, S00°13'42"E, at a distance of 685.73 feet passing the northeast corner of Lot 37, and being the southeast corner of Lot 38, for a total distance of 1379.71 feet to a PK Nail with "Brown" washer found for an interior ell corner hereof, said point is also an interior ell corner of said Lot 37, and being the southwest corner of said Lot 2;

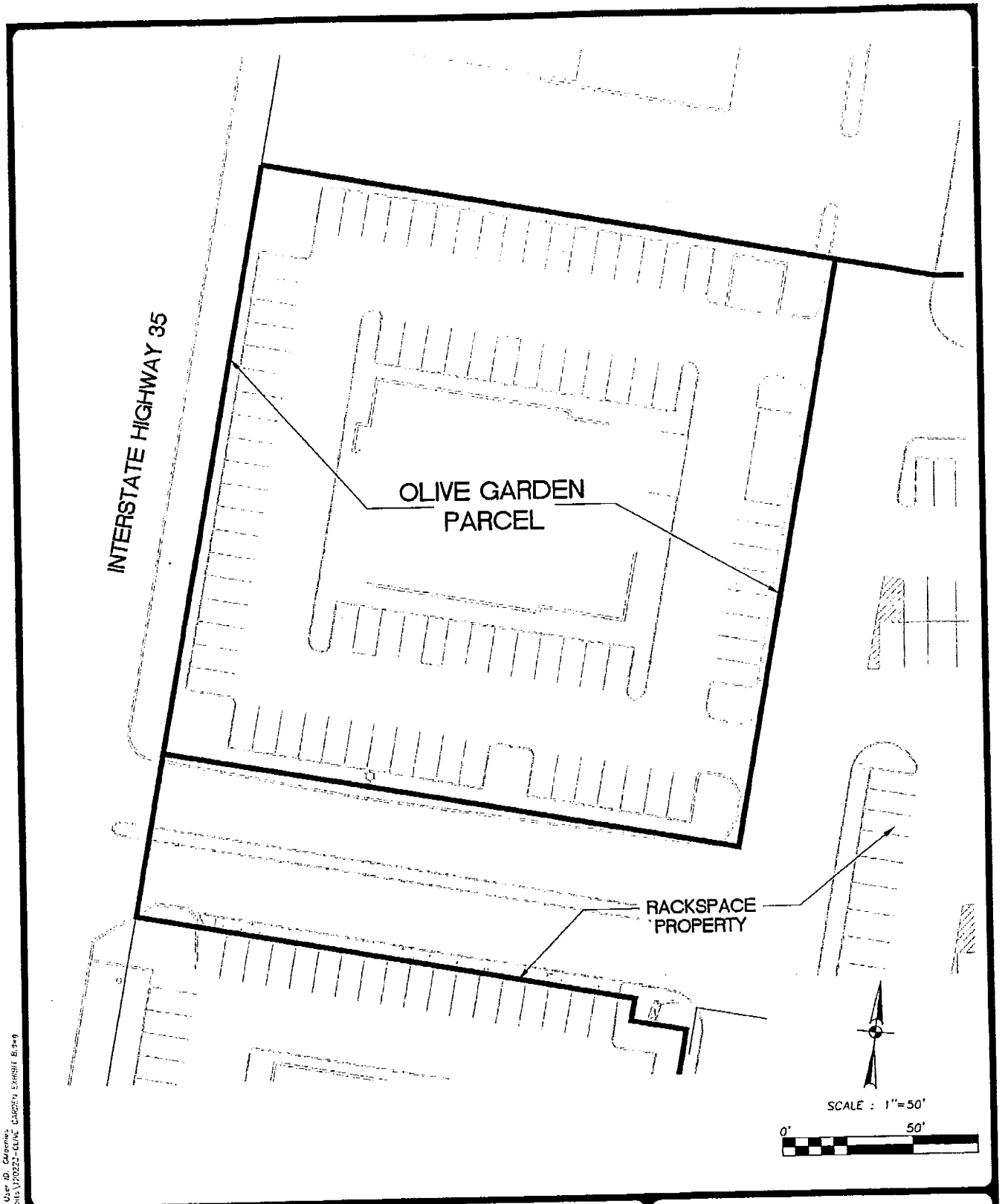
THENCE, with a north line of said Lot 37, and in part with the south line of said Lot 2, N89°35'15"E, a distance of 63.93 feet to a PK with Shiner found for an exterior ell corner hereof, said point is also an exterior ell corner of said Lot 37;

THENCE, in part with an east line of said Lot 37, and in part with an east line of Lot 44 of said Replat Establishing Simon Apple Garden, S00°31'25"E, a distance of 145.30 feet to a 1/2" iron rod found for a southeast corner hereof, said point is also a southeast corner of said Lot 44 and being the northwest corner of Lot 12, Block 10 of Camelot Subdivision Unit 7, recorded in Volume 6500, Page 144 (D.P.R.B.C.T.), and being a point in the east line of a 40' City Public Service Board Easement as shown on said plat,

THENCE, with the south line of said Lot 44, and the north line of said 40' City Service Board Easement, S89°43'01"W, a distance of 39.73 feet to a 1/2" iron rod found for an interior ell corner hereof, said point is also a point on the west line of said 40' City Public Service Board Easement, and being an interior ell corner of said Lot 44;

THENCE, with the west line of said 40' City Public Service Board Easement, and a west line of said Lot 44, S00°56'32"W, a distance of 15.88 feet to a 1/2" iron rod found for an exterior ell corner hereof, said point is also an exterior ell corner of said Lot 44, and being the northeast corner of Lot 13 of said Camelot Subdivision;

THENCE, in part with the north line of Lots 13-26, Block "D" of said Camelot Subdivision, and in part with the north line of Lot 9, Block "B", of Camelot Subdivision Unit 5A, recorded in Volume 6500, Page 16 (D.P.R.B.C.T.), and in part with the north line of Lot 49 of Windsor Square Wal-Mart III recorded in Volume 9560, Page 80 (D.P.R.B.C.T.), and in part with the north line of Lot 36 of said Toys "R" Us, S89°31'43"W, a distance of 2200.44 feet to the POINT OF BEGINNING and containing 66.9915 Acre (2,918,150 sq. ft.) of land, more or less.



JOB NO. 6984-30

DATE FEBRUARY, 2012

DESIGNER JM

CHECKED DM DRAWN JM

SHEET 1 OF 1

EXHIBIT 'B'
OLIVE GARDEN SITE PLAN

PAPE-DAWSON ENGINEERS

555 EAST RAMSEY | SAN ANTONIO, TEXAS 78216 | PHONE: 210 375.9000 FAX: 210 375.9010

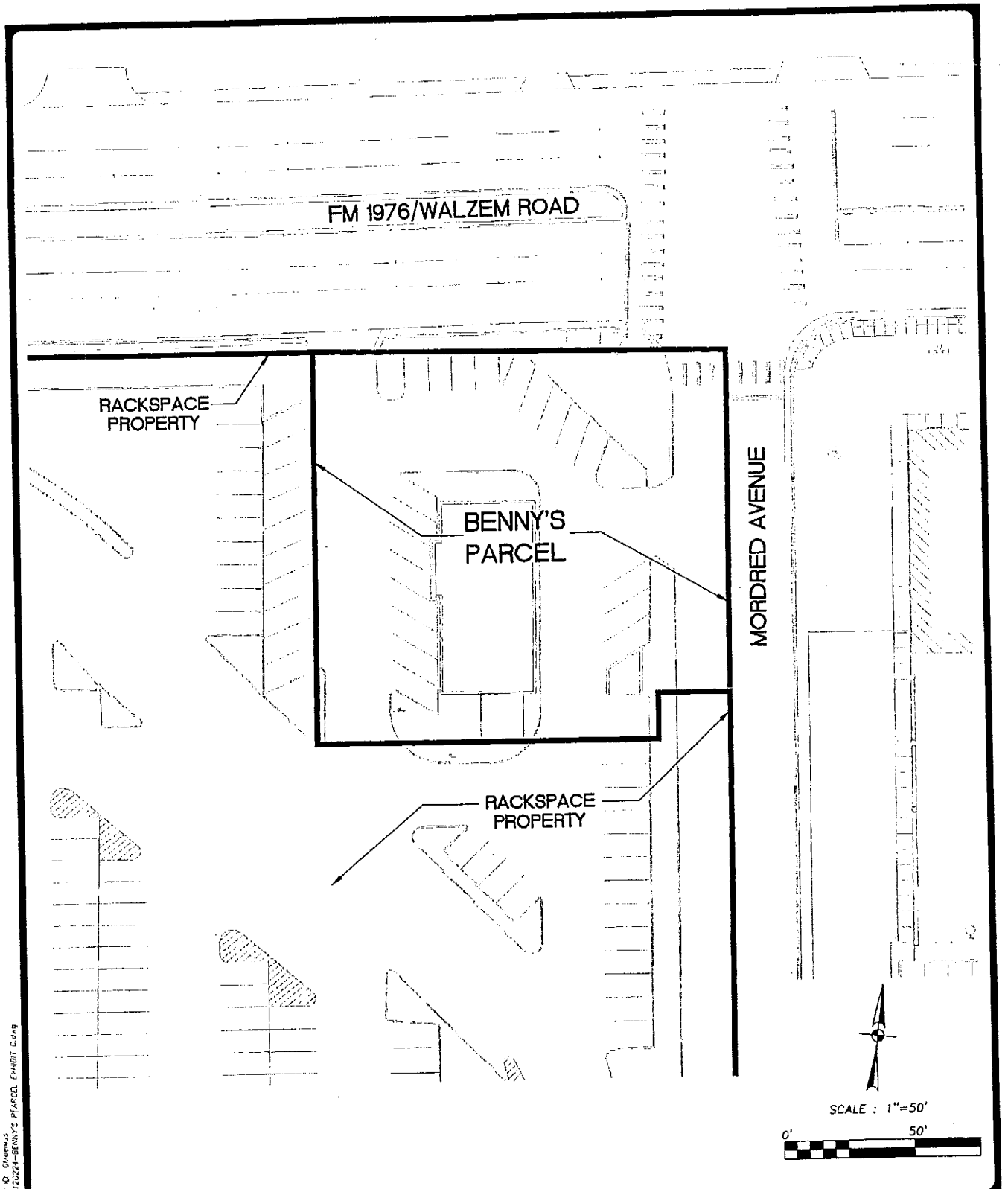
TEXAS BOARD OF PROFESSIONAL ENGINEERS, FIRM REGISTRATION # 470

Date Feb 28, 2012, 10:48am User ID: Cdepriest
File: P:\6984\30\Dwg\Layouts\70222-OLIVE GARDEN EXHIBIT B.dwg

THIS DOCUMENT HAS BEEN PRODUCED FROM MATERIAL THAT WAS STORED AND/OR TRANSMITTED ELECTRONICALLY AND MAY HAVE BEEN INADVERTENTLY ALTERED. REFER ONLY TO FINAL HARDCOPY MATERIALS BEARING THE CONSULTANT'S ORIGINAL SIGNATURE AND SEAL

Exhibit B-1
Legal Description of Olive Garden Parcel

Lot 46, NCB12190 Simon Apple Garden Subdivision, an Addition to the City of San Antonio, Bexar County, Texas, according to the map or plat thereof recorded in Volume 9551, Page 187-88, in the Deed and Plat Records of Bexar County, Texas.



JOB NO. 6984-30

DATE FEBRUARY, 2012

DESIGNER JMJ

CHECKED DM DRAWN JM

SHEET 1 OF 1

EXHIBIT 'C'

BENNY'S SITE PLAN

PAPE-DAWSON ENGINEERS

555 EAST RAMSEY | SAN ANTONIO, TEXAS 78216 | PHONE: 210.375.9000 FAX: 210.375.9010

TEXAS BOARD OF PROFESSIONAL ENGINEERS, FIRM REGISTRATION # 470

Date: Feb 28, 2012, 10:55am User ID: Gvarnus
File: P:\9984\30\Design\Exhibits\120224-BENNY'S PEARCEL EXHIBIT C.dwg

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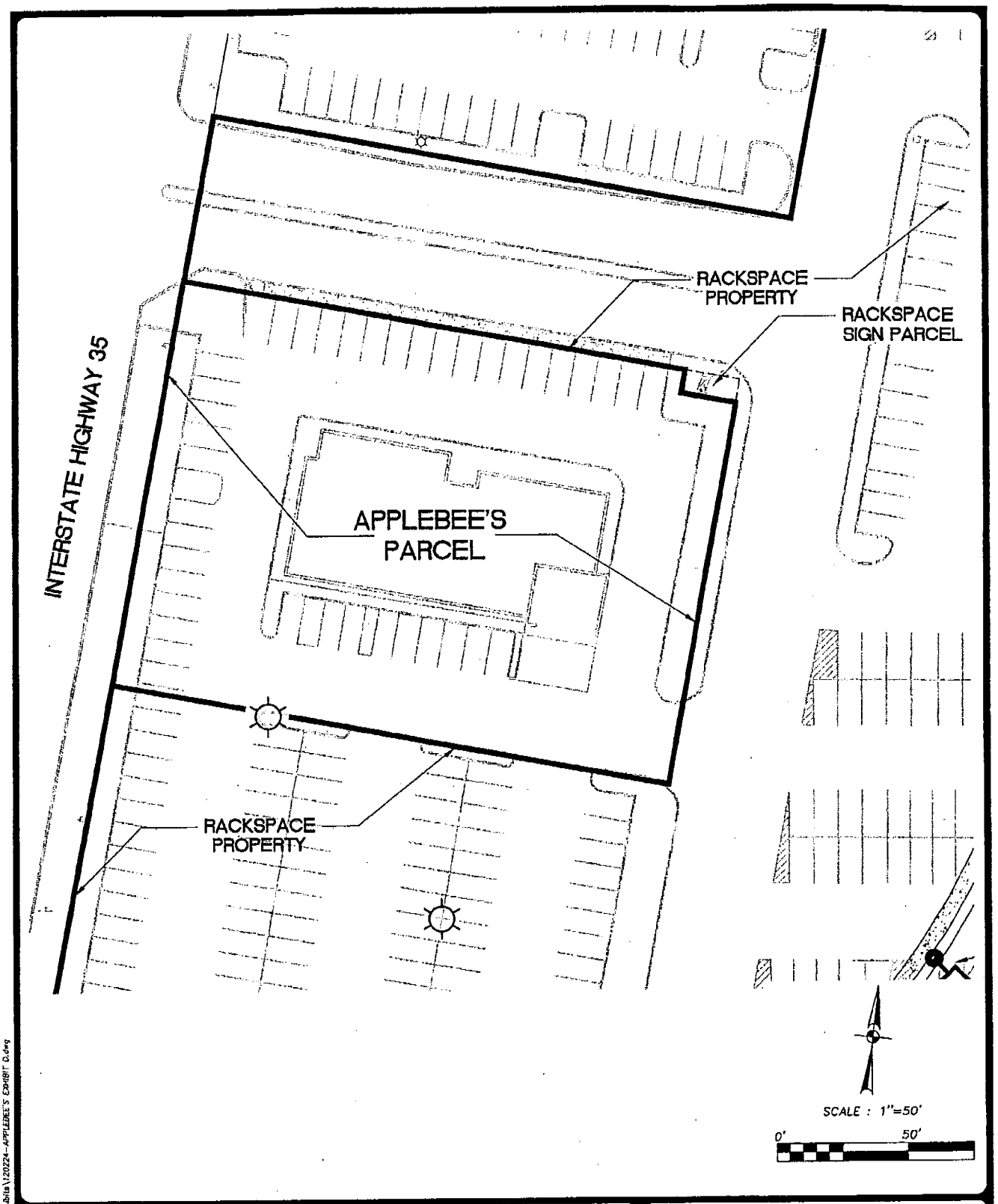
Exhibit C-1
Legal Description of Benny's Parcel

Lot 39, NCB12190, Simon Subdivision, an Addition to the City of San Antonio, Bexar County, Texas, according to the map or plat thereof recorded in Volume 9522, Page 107-108, in the Deed and Plat Records of Bexar County, Texas.



JOB NO. 6984-30

DATE FEBRUARY, 2012

DESIGNER JM

CHECKED DM DRAWN JM

SHEET 1 OF 1

EXHIBIT 'D'

APPLEBEE'S SITE PLAN

PAPE-DAWSON ENGINEERS

555 EAST RAMSEY | SAN ANTONIO, TEXAS 78216 | PHONE: 210.375.9000 FAX: 210.375.9010

TEXAS BOARD OF PROFESSIONAL ENGINEERS, FIRM REGISTRATION # 470

Date: May 11, 2012, 10:20am User ID: GMoreno
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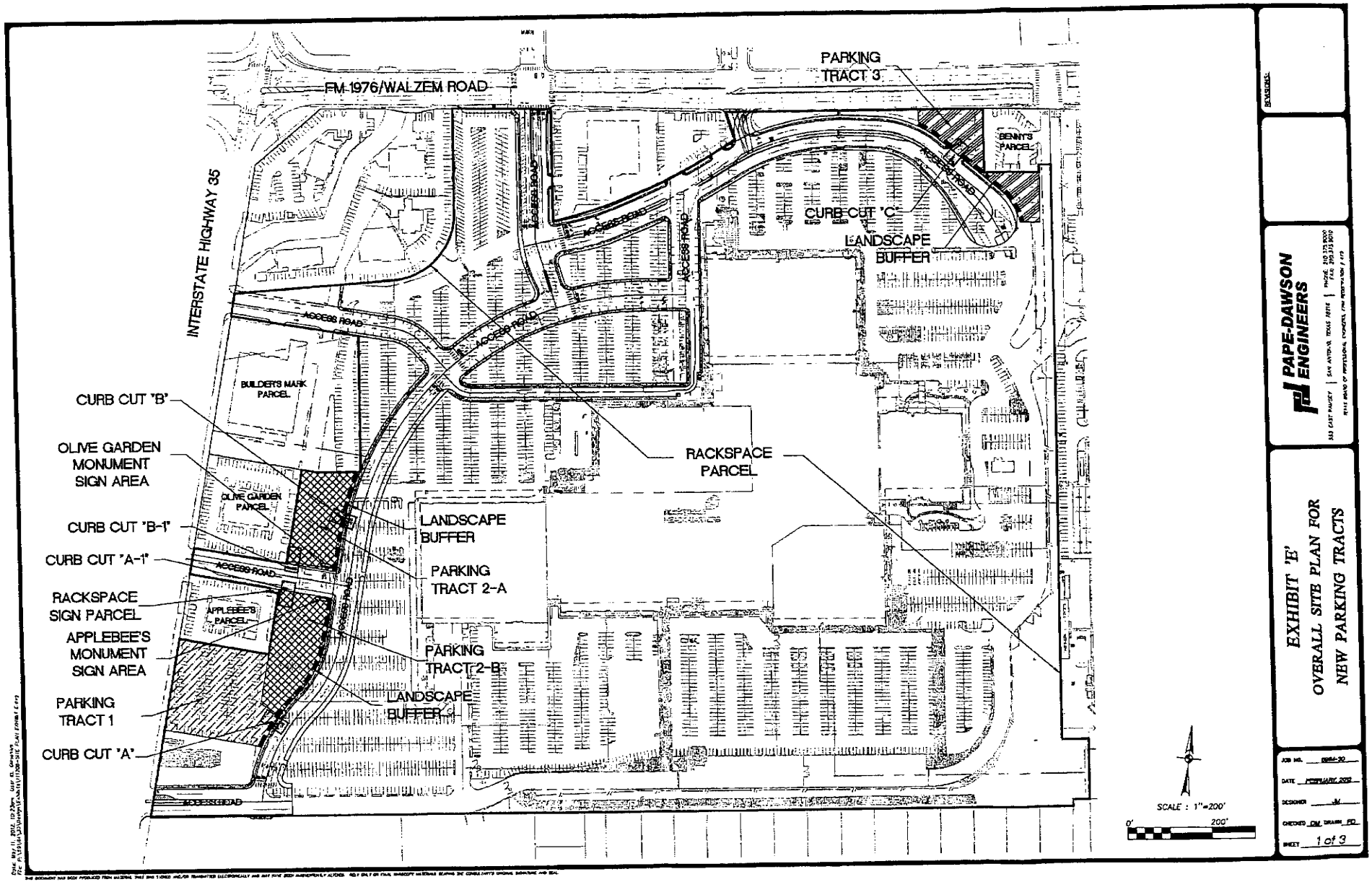
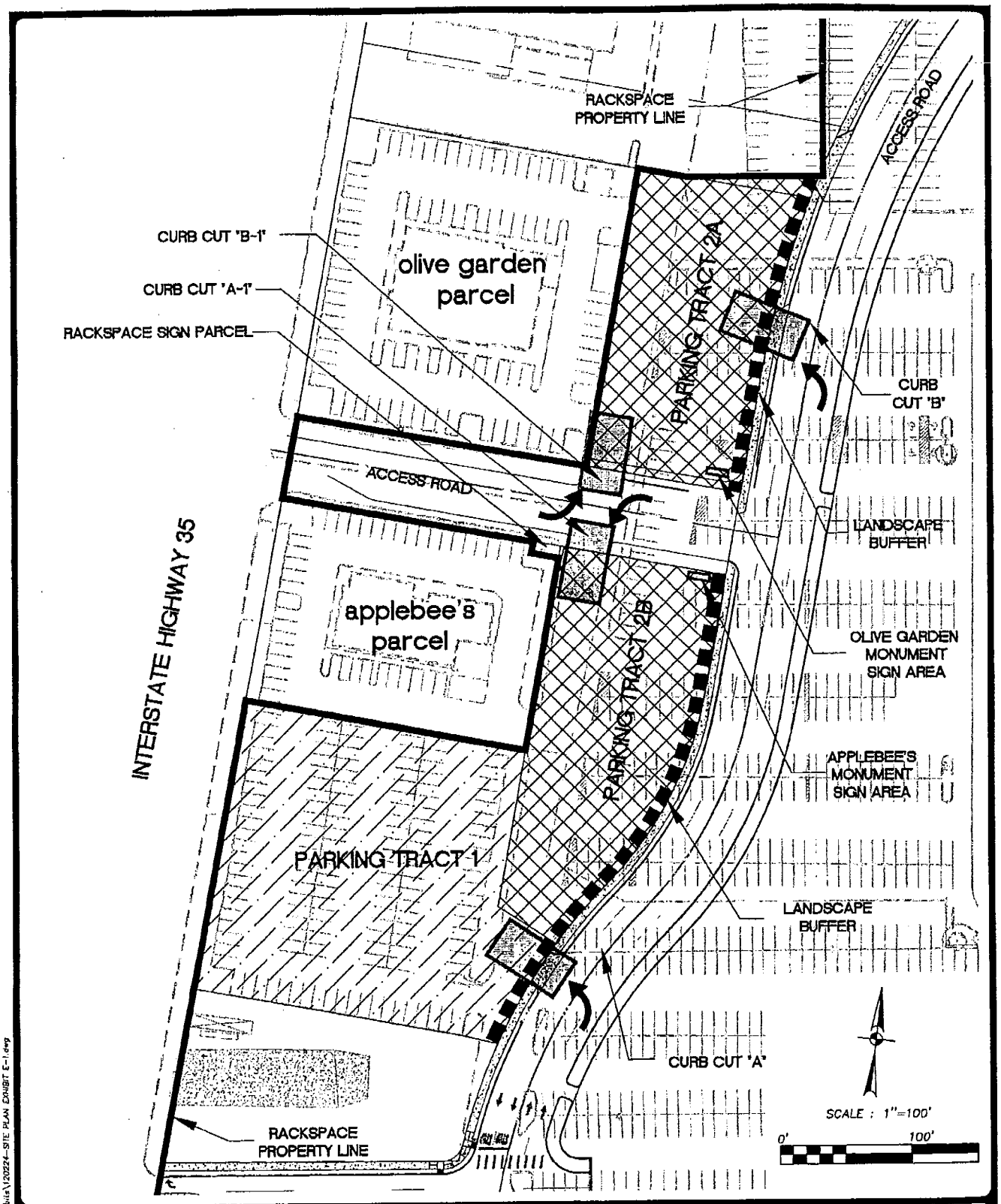
Exhibit D-1
Legal Description of Applebee's Parcel

Lot 45, NCB12190 Simon Apple Garden Subdivision, an Addition to the City of San Antonio, Bexar County, Texas, according to the map or plat thereof recorded in Volume 9551, Page 187-88, in the Deed and Plat Records of Bexar County, Texas.


FM 1976/WALZEM ROAD
INTERSTATE HIGHWAY 35
PARKING TRACT 3
BENNT'S PARCEL
CURB CUT 'C'
LANDSCAPE BUFFER
ACCESS ROAD
BUILDER'S MARK PARCEL
CURB CUT 'B'
OLIVE GARDEN MONUMENT SIGN AREA
OLIVE GARDEN PARCEL
CURB CUT 'B-1'
CURB CUT 'A-1'
RACKSPACE SIGN PARCEL
APPLEBEE'S PARCEL
APPLEBEE'S MONUMENT SIGN AREA
PARKING TRACT 1
CURB CUT 'A'
RACKSPACE PARCEL
LANDSCAPE BUFFER
PARKING TRACT 2-A
PARKING TRACT 2-B
LANDSCAPE BUFFER
SCALE : 1"=200'
0'
200'
PAPE-DAWSON ENGINEERS
EXHIBIT 'E'
OVERALL SITE PLAN FOR NEW PARKING TRACTS
JOB NO.
DATE
DESIGNED
CHECKED
DRAWN
SHEET 1 of 3



JOB NO. 6984-20

DATE FEBRUARY, 2012

DESIGNER JM

CHECKED DM DRAWN JM

SHEET 2 OF 3

EXHIBIT 'E-1'

SITE PLAN FOR PARKING TRACTS 1 AND 2

PAPE-DAWSON ENGINEERS

555 EAST RAMSEY | SAN ANTONIO, TEXAS 78216 | PHONE: 210.375.9000 FAX: 210.375.9010

TEXAS BOARD OF PROFESSIONAL ENGINEERS, FIRM REGISTRATION # 470

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Date: May 11, 2012, 10:26am User ID: Cdvenius
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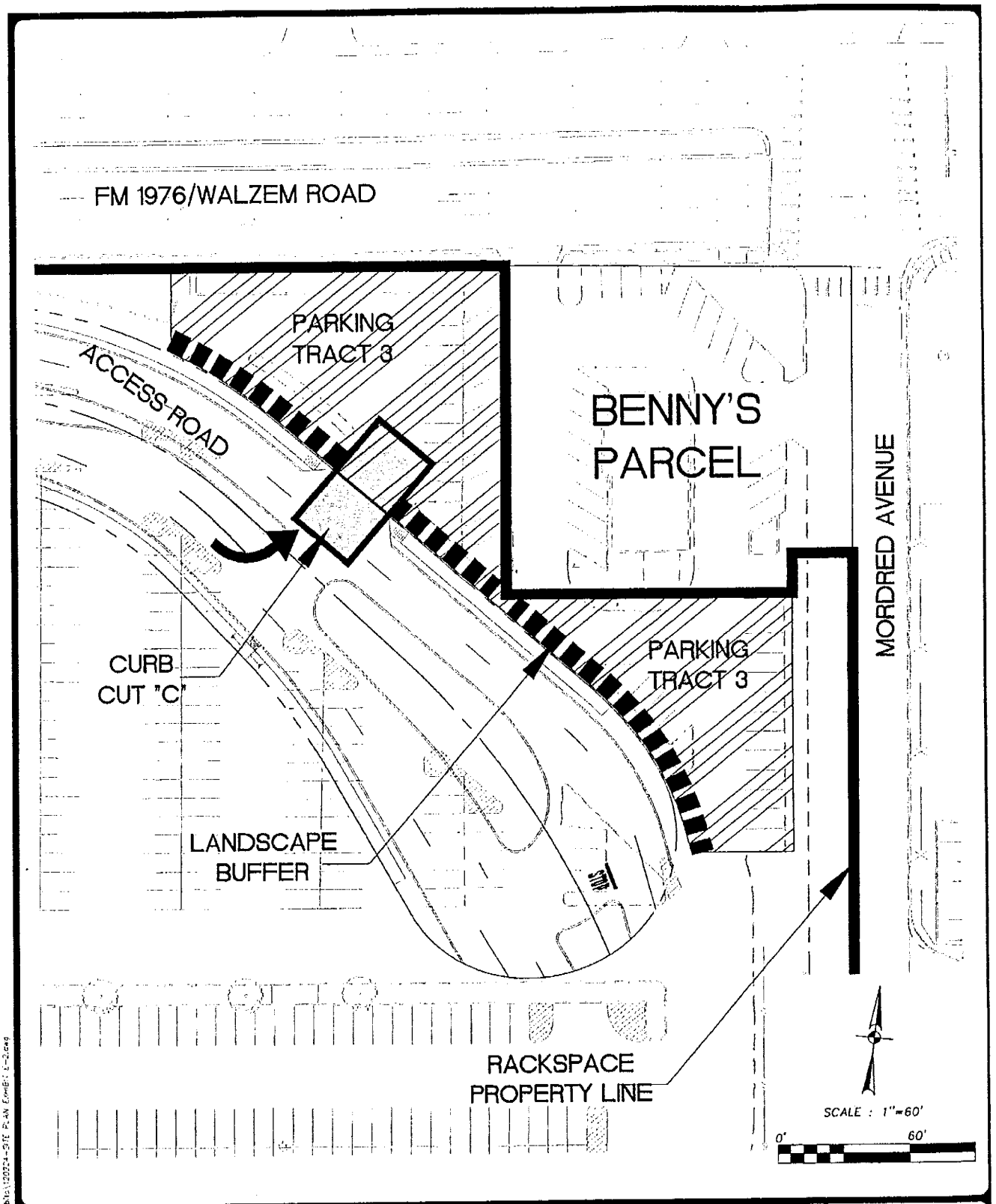

JOB NO. 6984-30
DATE FEBRUARY, 2012
DESIGNER JM
CHECKED DM DRAWN JM
SHEET 3 OF 3

EXHIBIT 'E-2'
SITE PLAN FOR PARKING TRACT 3

PAPE-DAWSON ENGINEERS
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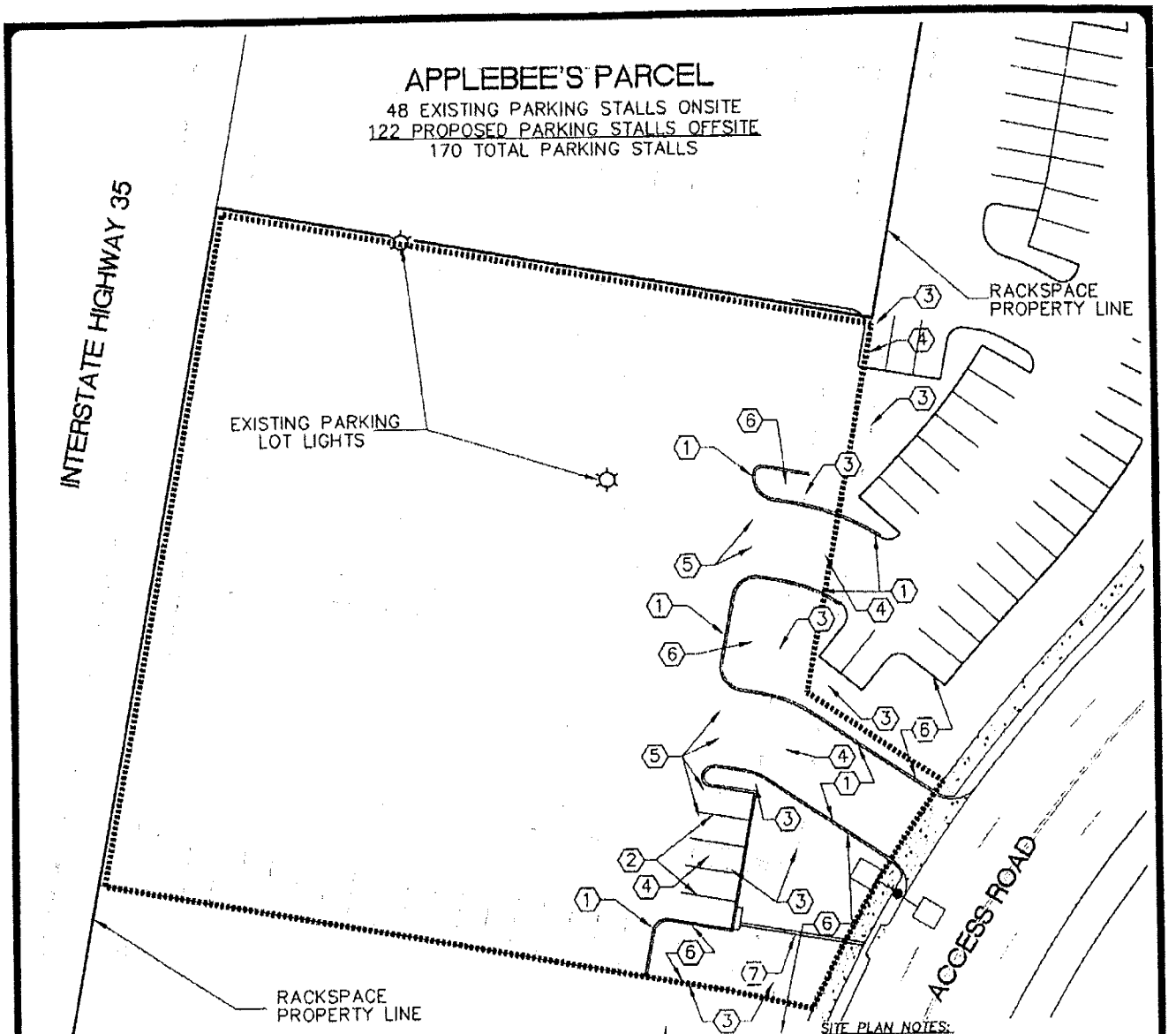

SITE PLAN NOTES:

1. NEW PARKING STALL DIMENSIONS SHALL BE 9'X18' AND DRIVING ISLES SHALL BE 25' WIDE IN ACCORDANCE WITH CITY OF WINDCREST DEVELOPMENT RULES.

2. WHERE ASPHALT IS REMOVED TO CREATE CURBED ISLANDS, DECOMPOSED GRANITE SHALL BE USED TO FILL IN THE CURBED ISLAND.

3. ACTUAL PARKING NUMBERS MIGHT DIFFER SLIGHTLY FROM THE NUMBERS DEPICTED HEREIN DUE TO FIELD CONDITIONS, BUT NOT MORE THAN 3 SPACES.

LEGEND

- (1) DENOTES PROPOSED CURB
- (2) DENOTES PROPOSED STRIPING
- (3) EXISTING CURB TO BE REMOVED.
- (4) DENOTES AREA OF PROPOSED ASPHALT PAVEMENT
- (5) DENOTES EXISTING STRIPING TO BE REMOVED
- (6) DENOTES EXISTING ASPHALT TO BE REMOVED
- (7) NEW STORM DRAIN IF REQUIRED.
- DENOTES PROPOSED STREET LIGHTS
- DENOTES PARKING TRACT BOUNDARY

SCALE : 1"=50'

0' 50'

LUMINAIRE SCHEDULE

Symbol	Label	Qty	Catalog Number	Description	Lamp	File	Lumens	LLF	Watts
N	E	19	CHLD 250S R2 FL (II-SHORT-CUTOFF)	FLAT GLASS LENS. ALUMINUM DJ REFLECTOR SOCKET POSITION A-2	ONE 250-WATT CLEAR ET-18 HIGH PRESSURE SODIUM, HORIZONTAL POSITION.	CHLD_250S_R 2_FL_(II-SHORT-CUTOFF).ies	25000	0.81	310
* *	F	4	CHLD 250S R2 FL (II-SHORT-CUTOFF)	FLAT GLASS LENS. ALUMINUM DJ REFLECTOR SOCKET POSITION A-2	ONE 250-WATT CLEAR ET-18 HIGH PRESSURE SODIUM, HORIZONTAL POSITION.	CHLD_250S_R 2_FL_(II-SHORT-CUTOFF).ies	25000	0.81	320

JOB NO. 6984-30

DATE FEBRUARY, 2012

DESIGNER JM

CHECKED CM DRAWN JM

SHEET 1 OF 4

EXHIBIT 'F1'

DETAILED PARKING LOT LAYOUT FOR APPLEBEE'S - AS OF COMPLETION DATE

(PARKING TRACT 1)

PAPE-DAWSON ENGINEERS

555 EAST RAMSEY | SAN ANTONIO, TEXAS 78216 | PHONE: 210.375.9000 FAX: 210.375.9010

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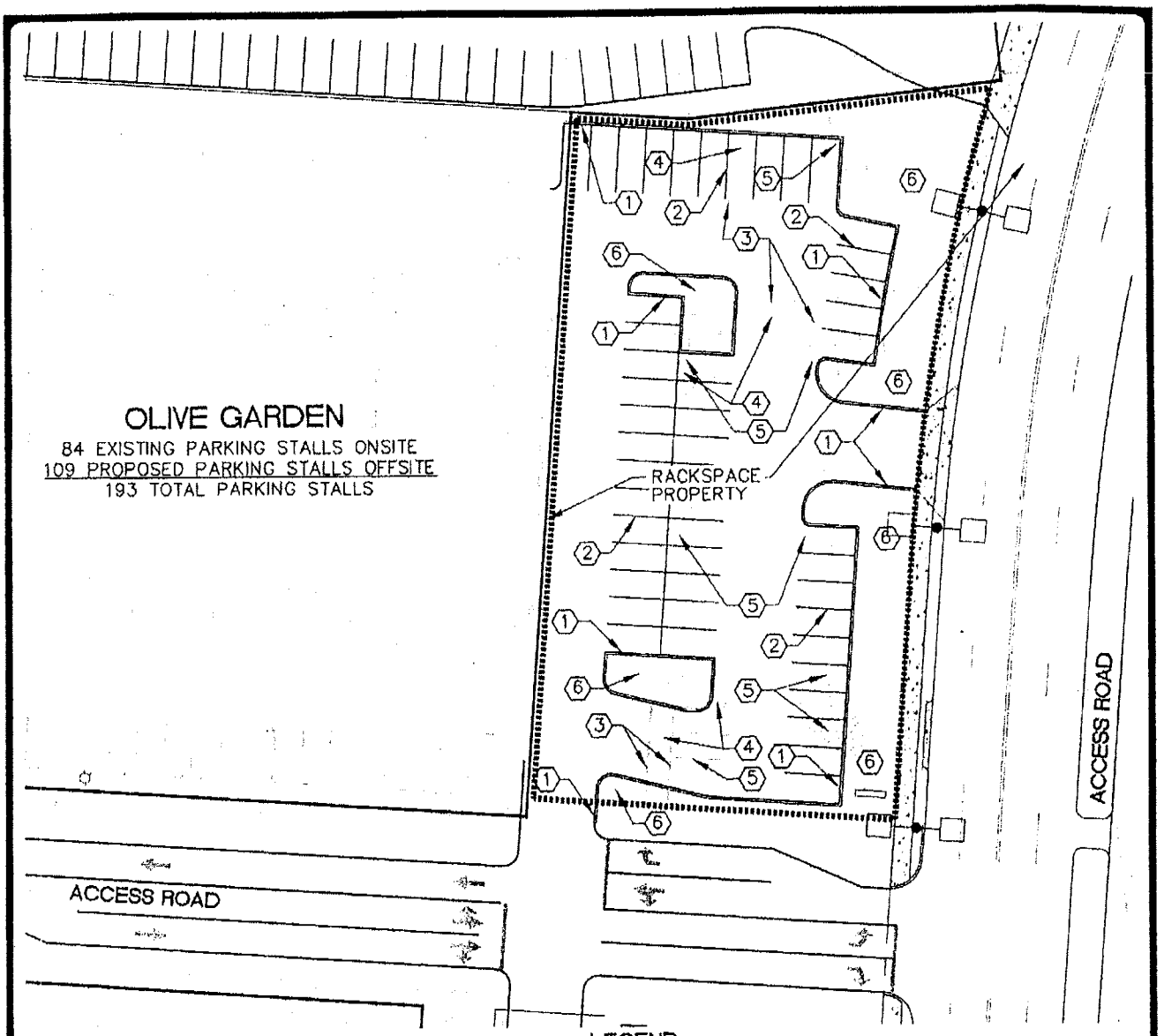


LEGEND

1. DENOTES PROPOSED CURB
2. DENOTES PROPOSED STRIPING
3. EXISTING CURB TO BE REMOVED.
4. DENOTES AREA OF PROPOSED ASPHALT PAVEMENT
5. DENOTES EXISTING STRIPING TO BE REMOVED
6. DENOTES EXISTING ASPHALT TO BE REMOVED
- DENOTES PROPOSED STREET LIGHTS
- DENOTES PARKING TRACT BOUNDARY

SCALE : 1"=50'

0' 50'

SITE PLAN NOTES:

1. *NEW PARKING STALL DIMENSIONS SHALL BE 9'X18' AND DRIVING ISLES SHALL BE 25' WIDE IN ACCORDANCE WITH CITY OF WINDCREST DEVELOPMENT RULES.*

2. *WHERE ASPHALT IS REMOVED TO CREATE CURBED ISLANDS, DECOMPOSED GRANITE SHALL BE USED TO FILL IN THE CURBED ISLAND.*

3. *ACTUAL PARKING NUMBERS MIGHT DIFFER SLIGHTLY FROM THE NUMBERS DEPICTED HEREIN DUE TO FIELD CONDITIONS, BUT NOT MORE THAN 3 SPACES.*

LUMINAIRE SCHEDULE

Symbol	Label	Qty	Catalog Number	Description	Lamp	File	Lumens	LLF	Watts
	E	19	CHLD 2605 R2 FL (B-SHORT-CUTOFF)	FLAT GLASS LENS. ALUMINUM DJ REFLECTOR SOCKET POSITION A-2	ONE 250-WATT CLEAR ET-18 HIGH PRESSURE SODIUM. HORIZONTAL POSITION.	CHLD_2605_R 2_FL_(B-SHORT-CUTOFF).ies	29000	0.91	310
	F	4	CHLD 2605 R2 FL (B-SHORT-CUTOFF)	FLAT GLASS LENS. ALUMINUM DJ REFLECTOR SOCKET POSITION A-2	ONE 250-WATT CLEAR ET-18 HIGH PRESSURE SODIUM. HORIZONTAL POSITION.	CHLD_2605_R 2_FL_(B-SHORT-CUTOFF).ies	29000	0.91	620

JOB NO. 6984-00

DATE FEBRUARY, 2012

DESIGNER JM

CHECKED DJ DRAWN JM

SHEET 2 OF 4

EXHIBIT 'F2'

DETAILED PARKING LOT LAYOUT FOR OLIVE GARDEN - AS OF COMPLETION DATE

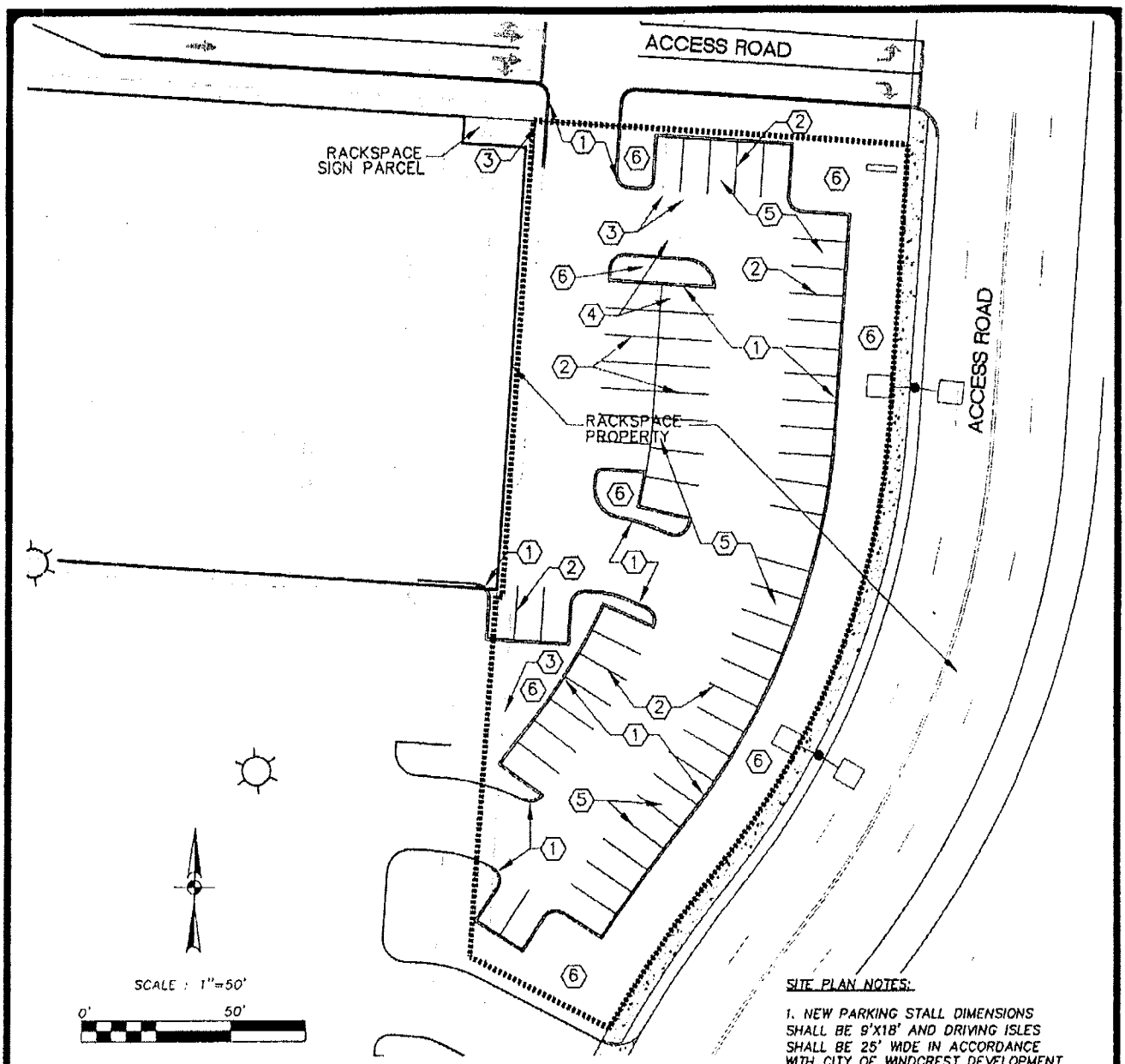
(PARKING TRACT 2A)

PAPE-DAWSON ENGINEERS

555 EAST RAUSCH | SAN ANTONIO, TEXAS 78216 | PHONE: 210.375.9000 FAX: 210.375.9010

TEXAS BOARD OF PROFESSIONAL ENGINEERS FIRM REGISTRATION # 470

THIS DOCUMENT WAS ORIGINALLY ISSUED AND SEALED BY: RICHARD J. WILLIS, REGISTERED PROFESSIONAL ENGINEER IN THE STATE OF TEXAS. RELY ONLY ON FINAL HARDCOPY MATERIALS BEARING THE ENGINEER'S ORIGINAL SIGNATURE AND SEAL.



SITE PLAN NOTES:

1. NEW PARKING STALL DIMENSIONS SHALL BE 9'X18' AND DRIVING ISLES SHALL BE 25' WIDE IN ACCORDANCE WITH CITY OF WINDCREST DEVELOPMENT RULES.

2. WHERE ASPHALT IS REMOVED TO CREATE CURBED ISLANDS, DECOMPOSED GRANITE SHALL BE USED TO FILL IN THE CURBED ISLAND.

3. ACTUAL PARKING NUMBERS MIGHT DIFFER SLIGHTLY FROM THE NUMBERS DEPICTED HEREIN DUE TO FIELD CONDITIONS, BUT NOT MORE THAN 3 SPACES.

LEGEND

- (1) DENOTES PROPOSED CURB
- (2) DENOTES PROPOSED STRIPING
- (3) EXISTING CURB TO BE REMOVED.
- (4) DENOTES AREA OF PROPOSED ASPHALT PAVEMENT
- (5) DENOTES EXISTING STRIPING TO BE REMOVED
- (6) DENOTES EXISTING ASPHALT TO BE REMOVED
- DENOTES PROPOSED STREET LIGHTS
- DENOTES PARKING TRACT BOUNDARY

LUMINAIRE SCHEDULE

Symbol	Label	Qty	Catalog Number	Description	Lamp	File	Lumens	LLF	Watts
	E	19	CHLD 250S R2 FL (B-SHORT-CUTOFF)	FLAT GLASS LENS, ALUMINUM DJ REFLECTOR SOCKET POSITION A-2	ONE 250-WATT CLEAR ET-18 HIGH PRESSURE SODIUM HORIZONTAL POSITION	CHLD_250S_R2_FL_(B-SHORT-CUTOFF).ies	29000	0.81	310
	F	4	CHLD 250S R2 FL (B-SHORT-CUTOFF)	FLAT GLASS LENS, ALUMINUM DJ REFLECTOR SOCKET POSITION A-2	ONE 250-WATT CLEAR ET-18 HIGH PRESSURE SODIUM HORIZONTAL POSITION	CHLD_250S_R2_FL_(B-SHORT-CUTOFF).ies	29000	0.81	620

JOB NO. 0984-30
DATE FEBRUARY, 2012
DESIGNER JM
CHECKED DM DRAWN JM
SHEET 3 OF 4

EXHIBIT 'F3'

DETAILED PARKING LOT LAYOUT FOR OLIVE GARDEN - AS OF COMPLETION DATE

(PARKING TRACT 2B)

PAPE-DAWSON ENGINEERS
555 EAST RAMSEY | SAN ANTONIO, TEXAS 78216 | PHONE 210.375.9000 FAX 210.375.9010
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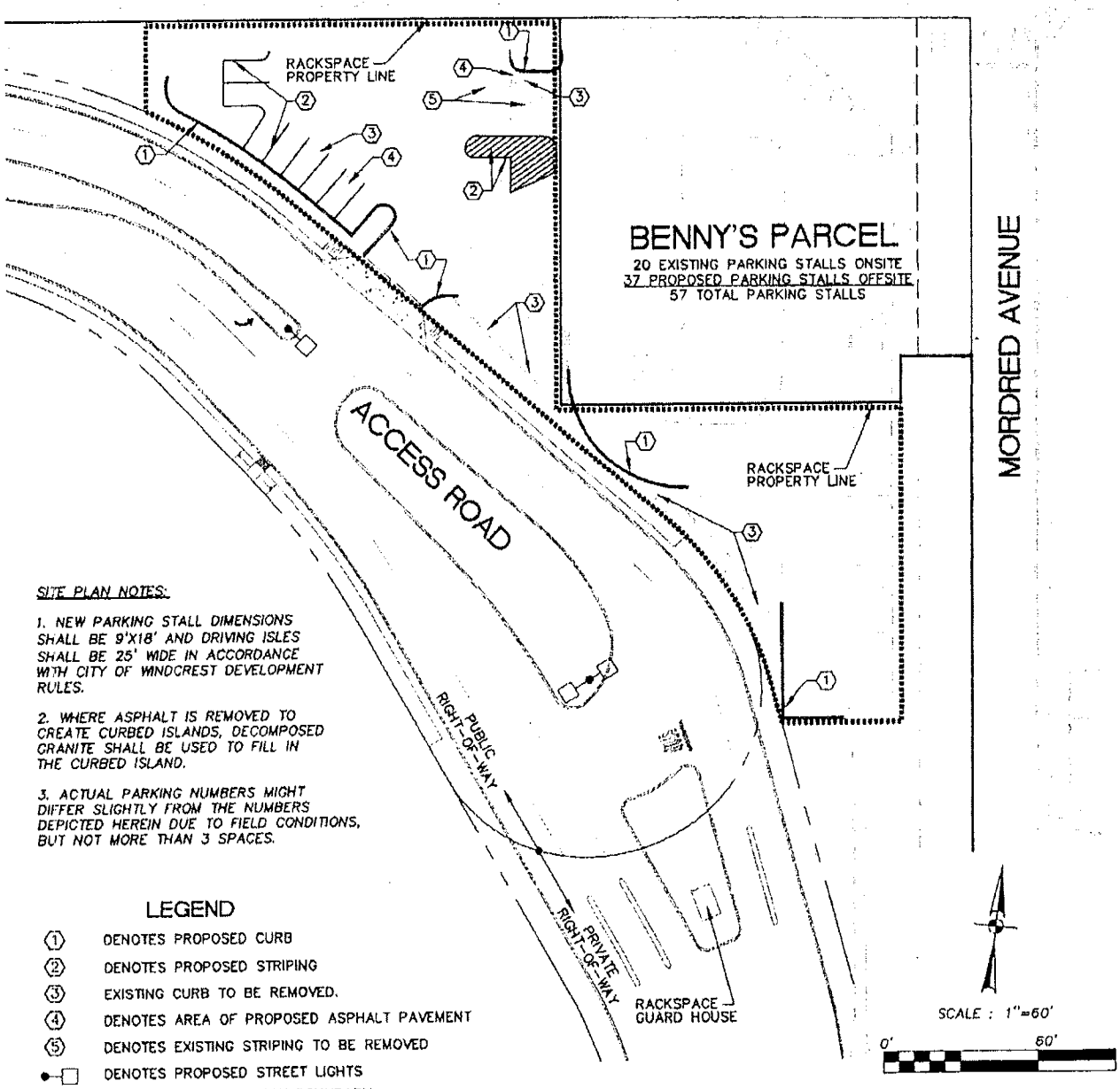
LUMINAIRE SCHEDULE

Symbol	Label	Qty	Catalog Number	Description	Lamp	File	Lumens	LLF	Watts
	E	19	CHLD 2505 R2 FL (B-SHORT-CUTOFF)	FLAT GLASS LENS, ALUMINUM DJ REFLECTOR SOCKET POSITION A-2	ONE 250-WATT CLEAR ET-18 HIGH PRESSURE SODIUM, HORIZONTAL POSITION.	CHLD_2505_R 2 FL (B-SHORT-CUTOFF).ies	29000	0.81	310
	F	4	CHLD 2505 R2 FL (B-SHORT-CUTOFF)	FLAT GLASS LENS, ALUMINUM DJ REFLECTOR SOCKET POSITION A-2	ONE 250-WATT CLEAR ET-18 HIGH PRESSURE SODIUM, HORIZONTAL POSITION.	CHLD_2505_R 2 FL (B-SHORT-CUTOFF).ies	29000	0.81	620

FM 1976/WALZEM ROAD



SITE PLAN NOTES:

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2. WHERE ASPHALT IS REMOVED TO CREATE CURBED ISLANDS, DECOMPOSED GRANITE SHALL BE USED TO FILL IN THE CURBED ISLAND.

3. ACTUAL PARKING NUMBERS MIGHT DIFFER SLIGHTLY FROM THE NUMBERS DEPICTED HEREIN DUE TO FIELD CONDITIONS, BUT NOT MORE THAN 3 SPACES.

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- (2) DENOTES PROPOSED STRIPING
- (3) EXISTING CURB TO BE REMOVED.
- (4) DENOTES AREA OF PROPOSED ASPHALT PAVEMENT
- (5) DENOTES EXISTING STRIPING TO BE REMOVED
- DENOTES PROPOSED STREET LIGHTS
- DENOTES PARKING TRACT BOUNDARY

JOB NO. 6984-30
DATE FEBRUARY 2012
DESIGNER JM
CHECKED OM DRAWN OM
SHEET 4 OF 4

EXHBIT 'F4'

DETAILED PARKING LOT LAYOUT FOR BENNY'S - AS OF COMPLETION DATE

(PARKING TRACT 3)

PAPE-DAWSON ENGINEERS
555 EAST PAUSEY | SAN ANTONIO, TEXAS 78216 | PHONE 210.375.9000 FAX 210.375.9010
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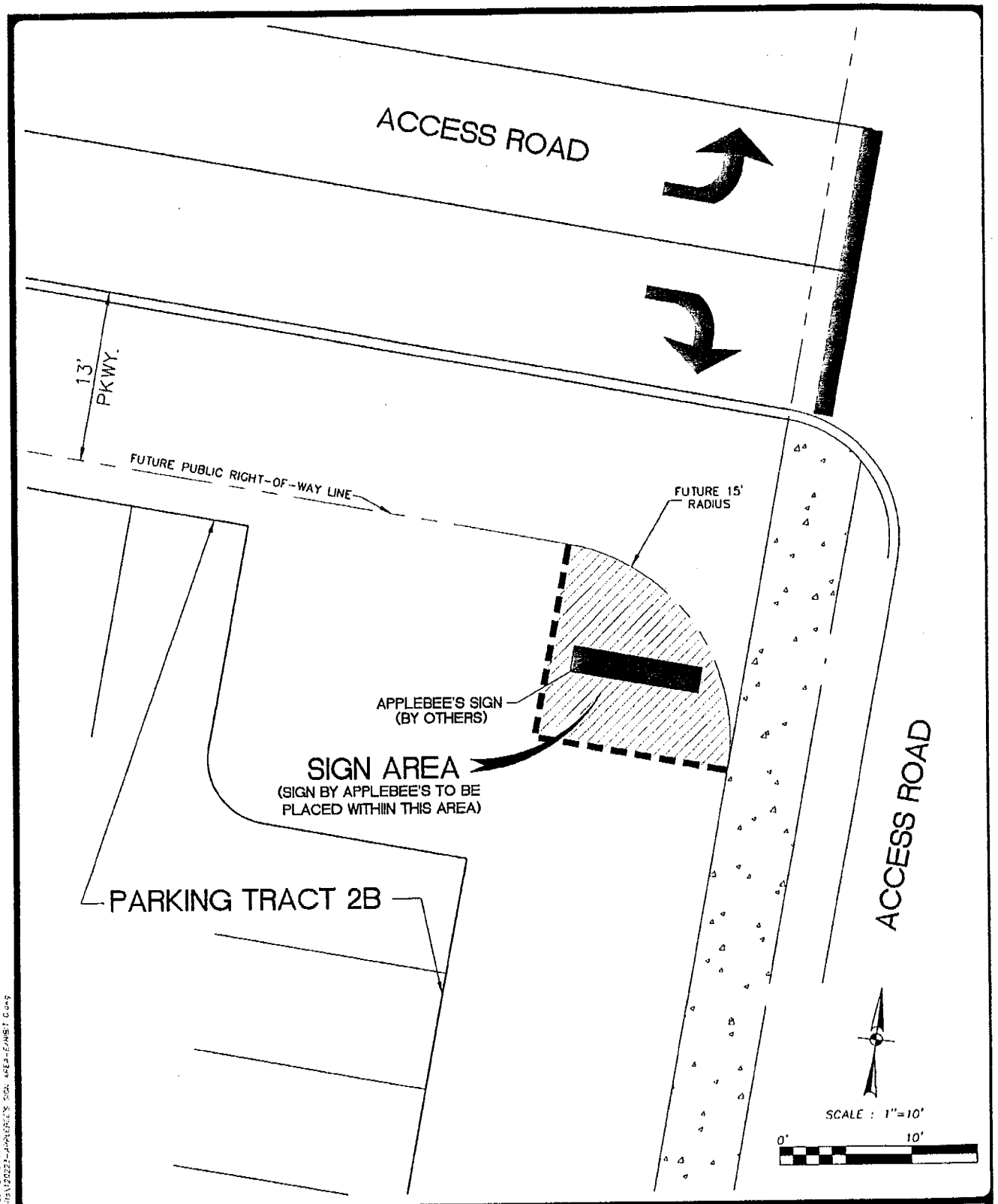
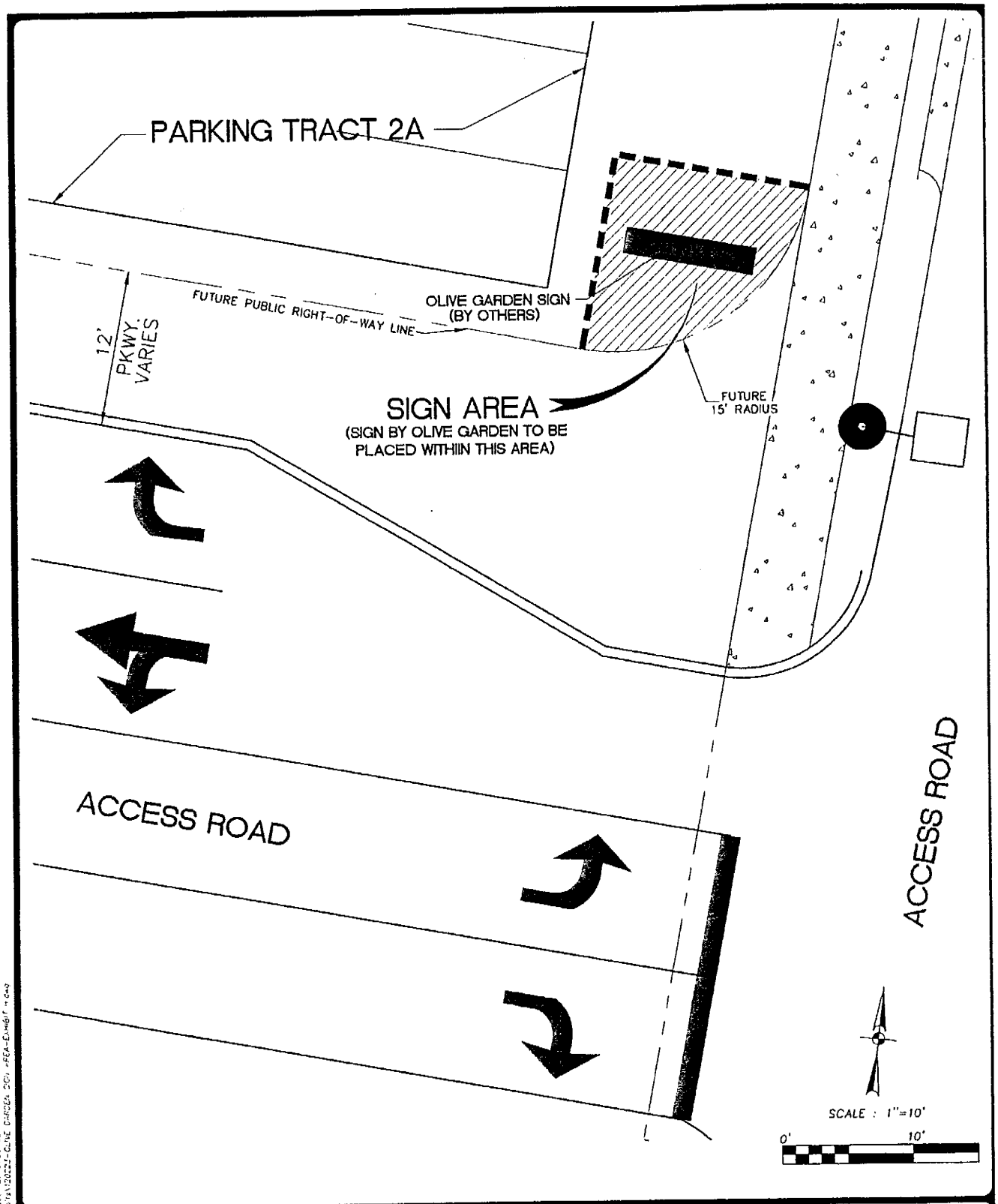


JOB NO. 6984-30
DATE FEBRUARY, 2012
DESIGNER JM
CHECKED DM DRAWN JM
SHEET 1 OF 1

EXHIBIT 'G'
APPLEBEE'S SIGN AREA

PAPE-DAWSON ENGINEERS
555 EAST RAVSEY | SAN ANTONIO, TEXAS 78216 | PHONE: 210.375.9000 FAX: 210.375.9010
TEXAS BOARD OF PROFESSIONAL ENGINEERS, FIRM REGISTRATION # 470



JOB NO. 6984-30

DATE FEBRUARY, 2012

DESIGNER JM

CHECKED DM DRAWN JM

SHEET 1 OF 1

EXHIBIT 'H'
OLIVE GARDEN SIGN AREA

PAPE-DAWSON ENGINEERS

555 EAST RAMSEY | SAN ANTONIO, TEXAS 78216 | PHONE: 210.375.9000 FAX: 210.375.2010

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Exhibit I
Construction Plans

Those certain construction plans and specifications as referenced in the plan index sheet attached hereto.

RACKER ROAD - OLD WINDSOR PARK MALL

INDEX OF DRAWINGS

COVER SHEET
C1. GENERAL NOTES
C2. INDEX / PHASING SHEET

C3. EXISTING DRAINAGE AREA MAP
C4. PROPOSED DRAINAGE AREA MAP
C5. PROPOSED DRAINAGE MAP SUB-AREA "A"
C6. PROPOSED DRAINAGE MAP SUB-AREA "B"
C7. PROPOSED DRAINAGE MAP SUB-AREA "C"
C8. PROPOSED DRAINAGE MAP SUB-AREA "D"
C9. PROPOSED DRAINAGE MAP SUB-AREA "E"
C10. PROPOSED DRAINAGE MAP SUB-AREA "F"
C11. PROPOSED DRAINAGE MAP SUB-AREA "G"
C12. PROPOSED DRAINAGE MAP SUB-AREA "H"

C13. DEMOLITION PLAN (SHEET 1 OF 3)
C14. DEMOLITION PLAN (SHEET 2 OF 3)
C15. DEMOLITION PLAN (SHEET 3 OF 3)

C16. CONN'S DRIVE PLAN & PROFILE STATION 1+00 - 4+33.34
C17. WINDSOR PARKWAY PLAN & PROFILE STATION 1+00 - 6+00
C18. WINDSOR PARKWAY PLAN & PROFILE STATION 6+00 - 11+00
C19. WINDSOR PARKWAY PLAN & PROFILE STATION 11+00 - 16+00
C20. WINDSOR PARKWAY PLAN & PROFILE STATION 16+00 - 20+91.08
C21. RACKER ROAD PLAN & PROFILE STATION 1+00 - 6+00
C22. RACKER ROAD PLAN & PROFILE STATION 6+00 - 11+00
C23. RACKER ROAD PLAN & PROFILE STATION 11+00 - 14+11.01
C24. WINDSOR DRIVE PLAN & PROFILE STATION 1+00 - 5+10
C25. WINDSOR DRIVE PLAN & PROFILE STATION 5+10 - 6+57.11
RACKER EXIT PLAN & PROFILE STATION 1+00 - 2+18.51
C26. FOURWINDS DRIVE PLAN & PROFILE STATION 1+00 - 5+83.73
C27. PARK ROAD DRIVE PLAN & PROFILE 1+00 - 6+00
C28. PARK ROAD DRIVE PLAN & PROFILE 6+00 - 9+06.52
C29. APPLEBEE DRIVE PLAN & PROFILE STATION 1+00 - 4+94.25
C30. DECELERATION LANE PLAN & PROFILE STATION 1+00 - 3+50
C31. OVERALL UTILITY SHEET

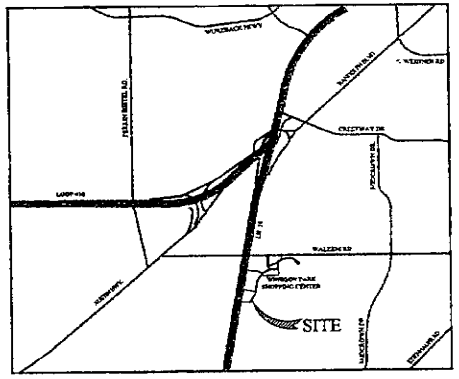
SEWER COLLECTION SYSTEM:

C32. SANITARY SEWER GENERAL NOTES
C33. SEWER PLAN AND PROFILE LINE "A" STATION 1+00 - 6+00
C34. SEWER PLAN AND PROFILE LINE "A" STATION 6+00 - 11+00
C35. SEWER PLAN AND PROFILE LINE "A" STATION 11+00 - 16+00
C36. SEWER PLAN AND PROFILE LINE "A" STATION 16+00 - 18+65.67
C37. SEWER PLAN AND PROFILE LINE "B" STATION 1+00 - 2+84.04
C38. SEWER DETAILS (SHEET 1 OF 2)
C39. SEWER DETAILS (SHEET 2 OF 2)

WATER DISTRIBUTION SYSTEM:

C40. WATER GENERAL NOTES
C41. WATER DISTRIBUTION PLAN (SHEET 1 OF 3)
C42. WATER DISTRIBUTION PLAN (SHEET 2 OF 3)
C43. WATER DISTRIBUTION PLAN (SHEET 3 OF 3)
C44. WATER DETAILS (SHEET 1 OF 3)
C45. WATER DETAILS (SHEET 2 OF 3)
C46. WATER DETAILS (SHEET 3 OF 3)

FOR THE CITY OF WINDCREST
ECONOMIC DEVELOPMENT CORPORATION
BY: DON McCRARY & ASSOCIATES



LOCATION MAP
N.T.S.

WINDCREST, TEXAS

DATE: DECEMBER 2011

PREPARED BY
Don McCrary & Associates, Inc
ENGINEERS & SURVEYORS
323 Bronxport Street
San Antonio, Texas 78216-2962
(210) 349-2651

PROJECT NO. 09021

FOR CONSTRUCTION

INDEX OF DRAWINGS

C47. DRAIN "A" & DRAIN "C" PLAN & PROFILES
C48. DRAIN "B" PLAN & PROFILE
C49. DRAIN "D" PLAN & PROFILE
C50. DRAINS "E", "F" & "G" PLAN & PROFILES
C51. DRAIN "H" PLAN & PROFILE
C52. DRAINAGE DETAILS (SHEET 1 OF 2)
C53. DRAINAGE DETAILS (SHEET 2 OF 2)

C54. TEMPORARY POLLUTION ABATEMENT GENERAL NOTES
C55. TEMPORARY POLLUTION ABATEMENT PLAN (SHEET 1 OF 3)
C56. TEMPORARY POLLUTION ABATEMENT PLAN (SHEET 2 OF 3)
C57. TEMPORARY POLLUTION ABATEMENT PLAN (SHEET 3 OF 3)
C58. TEMPORARY POLLUTION ABATEMENT DETAILS

C59. MISCELLANEOUS DETAILS
C60. ARMOR CURB DETAIL
C61. HANDICAP RAMP DETAILS

GAS DISTRIBUTION:

G1. GAS DISTRIBUTION PLAN (SHEET 1 OF 3)
G2. GAS DISTRIBUTION PLAN (SHEET 2 OF 3)
G3. GAS DISTRIBUTION PLAN (SHEET 3 OF 3)

LIGHTING:

L1. LIGHTING PLAN (SHEET 1 OF 6)
L2. LIGHTING PLAN (SHEET 2 OF 6)
L3. LIGHTING PLAN (SHEET 3 OF 6)
L4. LIGHTING PLAN (SHEET 4 OF 6)
L5. LIGHTING PLAN (SHEET 5 OF 6)
L6. LIGHTING PLAN (SHEET 6 OF 6)
L7. LIGHTING & SIGNAL DETAILS (SHEET 1 OF 6)
L8. LIGHTING & SIGNAL DETAILS (SHEET 2 OF 6)
L9. LIGHTING & SIGNAL DETAILS (SHEET 3 OF 6)
L10. LIGHTING & SIGNAL DETAILS (SHEET 4 OF 6)
L11. LIGHTING & SIGNAL DETAILS (SHEET 5 OF 6)
L12. LIGHTING & SIGNAL DETAILS (SHEET 6 OF 6)

RETAINING WALL:

R1. RETAINING WALL PLAN
R2. KEYSTONE RETAINING WALL SYSTEMS TYPICAL WALL DETAILS

TRAFFIC CONTROL:

T1. STRIPING & SIGNAGE PLAN (SHEET 1 OF 3)
T2. STRIPING & SIGNAGE PLAN (SHEET 2 OF 3)
T3. STRIPING & SIGNAGE PLAN (SHEET 3 OF 3)
T4. STRIPING DETAILS
T5. CROSSWALK DETAILS
T6. SIGNAGE DETAILS (SHEET 1 OF 2)
T7. SIGNAGE DETAILS (SHEET 2 OF 2)
T8. PROPOSED TRAFFIC SIGNAL
T9. TRAFFIC CONTROL DETAILS (SHEET 1 OF 5)
T10. TRAFFIC CONTROL DETAILS (SHEET 2 OF 5)
T11. TRAFFIC CONTROL DETAILS (SHEET 3 OF 5)
T12. TRAFFIC CONTROL DETAILS (SHEET 4 OF 5)
T13. TRAFFIC CONTROL DETAILS (SHEET 5 OF 5)

Exhibit J
Permitted Exceptions

1. Building set back line, 30 feet wide, along Walzem Road, as shown on plat recorded in Volume 9522, Pages 107-108, Deed and Plat Records of Bexar County, Texas.

2. Building setback line, 120 feet wide, measured from the North boundary line of Camelot Subdivision, Unit 7, along the south property line of Lot 37, as setback line of undetermined width located at the southeast corner of Lot 37, as shown on plat recorded in Volume 9522, Pages 107-108 of the Deed and Plat Records of Bexar County, Texas.

3. Public utility easement, of variable width, along Walzem Road, as dedicated to the City of San Antonio by instrument dated May 14, 1975, recorded in Volume 7599, Page 129 of the Deed Records, and as shown on plat recorded in Volume 9522, Pages 107-108, Deed and Plat Records of Bexar County, Texas.

4. Subsurface gas and electric easement, 20 feet wide, traversing and extending into Lots 37 and 38, as granted to the City of San Antonio by instrument dated July 24, 1975, recorded in Volume 7683, Page 966 of the Deed Records, and as shown on the plat recorded in Volume 9522, Pages 107-108, Deed and Plat Records of Bexar County, Texas.

5. Electric and gas transmission, distribution and service line easement, 20 feet wide within Lot 38, as granted to the City of San Antonio by instrument dated May 18, 1984, recorded in Volume 3216, Page 1141, of the Real Property Records, and as shown on plat recorded in Volume 9522, Pages 107-108, Deed and Plat Records of Bexar County, Texas..

6. Electric and gas transmission, distribution and service line easements, of variable widths, located within Lots 37 and 38, as granted to the City of San Antonio by instrument dated December 4, 1984, recorded in Volume 4906, Page 1394 (File No. 1976667) of the Real Property Records, and as shown on plat recorded in Volume 9522, Pages 107-108, Deed and Plat Records of Bexar County, Texas.

7. Electric and gas transmission, distribution and service line easements. of variable widths, located within Lots 37 and 38, as granted to the City of San Antonio by instrument dated December 4, 1984, recorded in Volume 6902, Page 166 and recorded in Volume 7005, Page 1663, of the Real Property Records of Bexar County, Texas..

8. City Public Service Board Easement, 40 feet wide, along the most eastern east property line of Lot 37, as shown on the plats recorded in Volume 7800, Pages 9-13 and Volume 9522, Pages 107-108, Deed and Plat Records of Bexar County, Texas.

9. Water line easements, 20 feet wide, traversing and extending into Lots 37 and 38, as granted to the City of San Antonio by instrument dated July 24, 1975, recorded in Volume 7653, Page 976 of the Deed Records, as amended by instrument dated April 16, 1976,

recorded in Volume 7803, Page 598 of the Deed Records, as partially vacated by instrument dated June 18, 1984, recorded in Volume 3207, Page 498 of the Real Property Records, and as shown on the plats recorded in Volume 7800, Pages 9-13 and Volume 9522, Pages 107-108, Deed and Plat Records of Bexar County, Texas.

10. Water line easement, 20 feet wide inside Lot 38, as granted to the City of San Antonio by instrument dated June 18, 1984, recorded in Volume 3153, Page 1982 of the Real Property Records, as shown on the plat recorded in Volume 9522, Pages 107-108, Deed and Plat Records of Bexar County, Texas.

11. Water line easement, 20 feet wide, located at the southeast corner of Lot 37, as granted to the City of San Antonio by instrument dated December 4, 1984, recorded in Volume 3351, Page 1166 of the Real Property Records, and as shown on plat recorded in Volume 9522, Pages 107-108, Deed and Plat Records of Bexar County, Texas.

12. Sanitary sewer easements, 16 feet wide, located within Lots 37 and 38, as granted to the City of San Antonio by instrument dated January 17, 1985, recorded in Volume 3352, Page 1925 of the Real Property Records.

13. Sanitary sewer easement, 10 feet wide, along the most eastern east property line of Lot 37, as shown on the plats recorded in Volume 7800, Pages 9-13 and Volume 9522, Pages 107-108, Deed and Plat Records of Bexar County, Texas.

14. Drainage easement, 25 feet wide, located west of, parallel with and adjacent to a portion of the east property line of Lot 37, as shown on plats recorded in Volume 7300, Pages 69-70, Volume 7800, Pages 9-13 and Volume 9522, Pages 107-108, Deed and Plat Records of Bexar County, Texas.

15. Drainage easement, 60 feet wide, located at the southeast corner of Lot 37, as shown on plats recorded in Volume 7300, Pages 69-70, Volume 7800, Pages 9-13 and Volume 9522, Pages 107-108, Deed and Plat Records of Bexar County, Texas.

16. Stormwater drainage easement, of variable width, located within Lots 37 and 38, as granted to the City of San Antonio by instrument dated January 17, 1985, recorded in Volume 3352, Page 1937 of the Real Property Records, and as shown on plat recorded in Volume 9522, Pages 107-108, Deed and Plat Records of Bexar County, Texas.

17. Underground telecommunication easements, of varying widths, located within Lots 37 and 38, as granted to Southwestern Bell Telephone Company by instrument dated June 1984, recorded in Volume 3356, Page 1296 of the Real Property Records, and as shown on plat recorded in Volume 9522, Pages 107-108, Deed and Plat Records of Bexar County, Texas.

18. Non-access easement, 1 foot by 50 feet, along the south boundary of Lot 44, at its intersection with King Arthur Street, as shown on plat recorded in Volume 9551, Pages 187-188, Deed and Plat Records of Bexar County, Texas.

19. Drainage easement, 47 feet wide, along part of the south boundary of Lot 44, as shown on plat recorded in Volume 9551, Pages 187-188, Deed and Plat Records of Bexar County, Texas.

20. Lo Vaca Gathering Co. Easement, 50 feet wide, entering the property at the south boundary of Lot 44, running north and turning west and turning northerly, recorded in Volume 7413, Page 317 and Volume 7425, Page 387, Deed Records of Bexar County, Texas.

21. Drainage easement, 25 feet wide, along the south portion of Lot 44, as shown on plat recorded in Volume 9551, Pages 187-188, Deed and Plat Records of Bexar County, Texas.

22. Existing drainage easement, 60 feet wide, entering Lot 44 at the west boundary and running east, as shown on plat recorded in Volume 9551, Pages 187-188, Deed and Plat Records of Bexar County, Texas.

23. Overhang easement, 4 feet wide, adjacent to the west boundary of Lot 44, as shown on plat recorded in Volume 9551, Pages 187-188, Deed and Plat Records of Bexar County, Texas.

24. Sanitary sewer easement, 10 feet wide, across the most easterly portion of Lot 44, as shown on plat recorded in Volume 9551, Pages 187-188, Deed and Plat Records of Bexar County, Texas.

25. Easement Agreement with the City of San Antonio, recorded in Volume 4906, Page 1394, Real Property Records of Bexar County, Texas.

26. Building setback lines, 120 feet from the south boundary of Lot 44, 30 feet from the west boundary along I.H. 35 of Lot 44, and 15 feet from the north boundary along Walzem Road line of Lot 44, as shown on plat recorded in Volume 9551, Pages 187-188, Deed and Plat Records of Bexar County, Texas.

27. Building setback line, 15 feet wide, increasing to 30 feet wide, along the Walzem Road property line, as shown on plat recorded in Volume 9522, Pages 105-106, Deed and Plat Records of Bexar County, Texas.

28. Drainage easement, 15 feet wide, and 100.72 feet in length, located at the most northwest corner of the subject property, as shown on plat recorded in Volume 9522, Pages 105-106, Deed and Plat Records of Bexar County, Texas.

29. Pipeline right-of-way, 50 feet wide, traversing the western portion of the subject property, granted to Magnolia Gas Company, by instruments recorded in Volume 1107, Page 478 and Volume 1107, Page 485, Deed Records of Bexar County, Texas, additionally supplemented by instruments recorded in Volume 3405, Page 297 and Volume 3589, Page

371, Deed Records of Bexar County, Texas, as conveyed to Lo-Vaca Gathering Company by instrument recorded in Volume 5905, Page 447, Deed Records of Bexar County, Texas, as initially defined by instructed recorded as Volume 5159, Page 661, as further defined by instrument executed in multiple counterparts as recorded in Volume 7413, Page 317 and Volume 7425, Page 387, Deed Records of Bexar County, Texas, and as shown on plat recorded in Volume 9522, Pages 105-106, Deed and Plat Records of Bexar County, Texas.

30. Public utility easement, of variable width, along Walzem Road property line, as dedicated to the City of San Antonio, by instrument dated May 12, 1975, recorded in Volume 7599, Page 111, Deed Records of Bexar County, Texas, and as shown on plat recorded in Volume 9522, Pages 105-106, Deed and Plat Records of Bexar County, Texas.

31. Building setback line, 25 feet wide, along the front property line, as shown on plat recorded in Volume 7800, Pages 9-13, Deed and Plat Records of Bexar County, Texas.

32. Overhang easement, 4 feet wide, along the front property line, as shown on plat recorded in Volume 7800, Pages 9-13, Deed and Plat Records of Bexar County, Texas.

33. Gas and electric easement, 20 feet wide, as shown on plat recorded in Volume 7800, Pages 9-13, Deed and Plat Records of Bexar County, Texas.

34. Lo Vaca Gathering Co. gas easement, 50 feet wide, as shown on plat recorded in Volume 7800, Pages 9-13, Deed and Plat Records of Bexar County, Texas, and recorded in Volume 7425, Page 387, Deed Records of Bexar County, Texas.

35. Memorandum of Ground Lease recorded in Volume 13039, Page 2252, Real Property Records of Bexar County, Texas.

ACCESS EASEMENT AGREEMENT

This Access Easement Agreement (this "**Agreement**") is made and entered into effective as of the ____ day of _____, 2012 (the "**Effective Date**"), by and between (i) RACKSPACE US, INC., a Delaware corporation ("**Rackspace**"), and ANTHON MINOR, LTD., a Texas limited partnership ("**Anthon Minor**"); and consented to by WINDCREST ECONOMIC DEVELOPMENT CORPORATION ("**Windcrest**").

ARTICLE 1.

Recitals

1.1 **Rackspace Parcel**. Windcrest is the Owner of certain real property in the City of Windcrest, Bexar County, Texas, more particularly described on **Exhibit A** attached hereto (the "**Rackspace Parcel**") and Rackspace is the ground lessee thereof.

1.2 **Anthon Minor Parcel**. Anthon Minor is the Owner of certain real property in the City of Windcrest, Bexar County, Texas adjacent to the Rackspace Parcel, more particularly described on **Exhibit B** attached hereto (the "**Anthon Minor Parcel**").

1.3 **Access Easement**. The Owner of the Rackspace Parcel and the Owner of the Anthon Minor Parcel desire to subject a portion of the Rackspace Parcel defined herein as the "Access Tract" to a certain limited and specifically described easement for access set forth hereinbelow, subject to which the Access Tract shall be held, improved and conveyed, for the benefit of the Anthon Minor Parcel, as more particularly set forth herein.

NOW, THEREFORE, in consideration of the premises, the sum of Ten and No/100 Dollars ($10.00), and other good and valuable consideration in hand paid, and in consideration of the mutual agreements herein made, the receipt and sufficiency of which are hereby acknowledged, the undersigned hereby agree as follows:

ARTICLE 2.

Definitions

2.1 **Access Tract**. That certain portion of the Rackspace Parcel depicted on the Site Plan as the "Proposed Access Easement".

2.2. **Access Road**. That certain publicly dedicated road to be constructed on the Rackspace Parcel, in the location depicted on the Site Plan as the "Windsor Parkway", as the same exists from time to time and as modified from time to time.

2.3 **Occupant**: Any Person, from time to time, entitled to the use and occupancy of any portion of the Property under any lease, sublease, license, concession or other similar agreement.

2.3 **Owner**: The owner of any portion of the Property, its successor or assigns. For purposes hereof, Rackspace, as the ground lessee of the Rackspace Parcel under the Rackspace Lease shall be deemed an Owner of the Rackspace Parcel.

2.4 **Parcel**. Any of the Rackspace Parcel or the Anthon Minor Parcel.

2.7 **Party**. Each of Rackspace and Anthon Minor.

2.8 **Permittee**: All Owners, Occupants and the partners, officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees and licensees of Owners and Occupants.

2.9 **Person**: Individuals, partnerships, firms, associations, corporations, trusts, governmental agencies, administrative tribunals or any other form of business or legal entity.

2.10 **Property**. The Rackspace Parcel and the Anthon Minor Parcel, collectively.

2.11 **Rackspace Lease**. That certain Ground Lease Agreement dated August 2, 2007, as amended from time to time, by and between Windcrest Economic Development Corporation, on behalf of the City of Windcrest, as landlord, and Rackspace, as tenant.

2.11 **Site Plan**. That certain drawing of the Property attached hereto as **Exhibit C** and made a part hereof.

ARTICLE 3.

Access Easement

3.1 **Grant of Access Easement**. The Owner of the Rackspace Parcel, as the Owner of the Access Tract, does hereby GRANT, SELL and CONVEY unto the Owner of the Anthon Minor Parcel for the benefit of the Owner of the Anthon Minor Parcel and its respective Occupants and Permittees, a perpetual, non-exclusive e asement, appurtenant to the Anthon Minor Parcel, for ingress and egress by vehicular and pedestrian traffic from the Anthon Minor Parcel across the Access Tract to the curb cut connecting into the Access Road, in the location depicted upon the Site Plan as "Proposed Access Easement" as the same exists from time to time, subject to the requirements of applicable law and the terms, provisions and conditions hereof (the "**Access Easement**"). The curb cut connecting into the Access Road, in the location depicted upon the Site Plan, shall not be modified, without the prior written consent of the Owner of the Rackspace Parcel.

3.2 **Limitations on Access Easement**. Nothing contained in this Agreement shall be construed as granting to the Owner of the Anthon Minor Parcel and/or its Occupants and Permittees (i) any right to park upon the Access Tract, any other portion of the Rackspace Parcel or any other property; (ii) any right to access any other portion of the Rackspace Parcel or any other property, other than the Access Tract and the Access Road (via the curb cut specified above), subject to the terms, provisions and conditions hereof; (iii) the right to construct

buildings or any other improvements on the Access Tract (except as specifically provided in Section 3.3 below) or any other property.

Notwithstanding anything contained herein to the contrary, the Owner of the Anthon Minor Parcel acknowledges and agrees that, until such time as the Access Road is constructed and dedicated for public use as a public street and the curbs cut thereto is approved by the applicable governmental authorities and constructed, no Owner, Occupant or Permittee of the Anthon Minor Parcel shall have any rights of access to the Access Tract, the Access Road or any portion of the Rackspace Parcel. In addition, the Owner of the Anthon Minor Parcel acknowledges and agrees that the exact location of the Access Road and curb cut thereto remains subject to the approval of all applicable governmental authorities and may be modified at any time as required by the applicable governmental authorities and/or applicable law. In the event the location of the Access Road and/or curb cut thereto is materially modified from the locations depicted on the Site Plan, the parties hereto shall record an addendum to this Agreement in the Real Property Records of Bexar County, Texas confirming such locations.

3.3 **Construction of the Access Road and Curb Cut**. Windcrest shall construct, or cause to be constructed, the following improvements, in accordance with the Rackspace Lease and its other agreements with Rackspace:

(i) The Access Road, a publicly dedicated street in the City of Windcrest, Texas, in approximately the location depicted on the Site Plan;

(ii) The curb cut connecting the Access Tract to the Access Road, in approximately the location depicted on the Site Plan;

(iii) The curb cut connecting the Anthon Minor Parcel to the Access Tract, in approximately the location depicted on the Site Plan.

The Owner of the Anthon Minor Parcel shall be responsible for construction, at its sole cost and expense, of any roadway or other facility to connect the Anthon Minor Parcel through the Access Tract to the Access Road. Additionally, the Owner of the Anthon Minor Parcel shall have the right to construct and install (i) drive surface improvements to cross the Access Easement, (ii) landscaping on the Anthon Minor Parcel adjacent to the Access Road, and (iii) a low profile monument sign not higher than eight (8) feet on the Anthon Minor Parcel adjacent to the Access Road; provided, however, that the plans and specifications for such monument sign, including, but not limited to, the design, height, and size thereof shall be subject to the prior written approval of the Owner of the Rackspace Parcel, such approval not to be unreasonably withheld, conditioned or delayed.

3.4 **Easement for Pre-Existing Utilities**. The Owner of each Parcel within the Property does hereby GRANT, SELL and CONVEY to each other Owner of each Parcel within the Property, for the benefit of each such Owner and its respective Occupants and Permittees, a non-exclusive easement, appurtenant to each Parcel within the Property, for the maintenance and operation of any utility lines that currently exist on any Parcel within the Property and serve another Parcel within the Property as of the date of this Agreement (if any).

3.5 **Permitted Exceptions**. The easements described herein are conveyed and reserved subject to any and all other restrictions, easements, utility lines, or other matters or easements affecting the Property (collectively, the "Permitted Exceptions"). Any mortgage loans or deeds of trust now or hereafter obtained by either party secured in whole or in part by any portion of the Property shall be subordinate to this Agreement. Further, the Owner of the Anthon Minor Parcel acknowledges and agrees that the Access Tract is a "no build area" pursuant to that certain Agreement Regarding Reciprocal Easements, Restrictions, Covenants and Conditions and Memorandum of Purchase Option between Rackspace and The NFP Partnership, a _____ limited partnership, recorded in the real property records of Bexar County, Texas substantially contemporaneous herewith, which shall also be a "Permitted Exception" for all purposes hereunder.

3.6 **Retention of Ownership**. Windcrest and Rackspace herein retain, reserve and shall continue to enjoy fee simple ownership and leasehold ownership, as applicable, and the surface and subsurface, of its dominant, fee and leasehold estate, as applicable, in the Access Tract, including easement areas, for any and all purposes which do not unreasonably interfere with and prevent the use of the Access Easement, and for the benefit of itself, and its respective successors and assigns, the right to use the surface and subsurface of such portions of the Access Tract, including easement areas, as may be necessary for the installation, operation, maintenance, repair, replacement, removal and relocation of underground storm sewer lines, sanitary sewer pipes, water and gas mains, electric power lines, telephone and cable T.V. lines, and other like uses which do not unreasonably interfere with and prevent the use of the Access Easement as contemplated herein.

ARTICLE 4.

Maintenance and Repair.

4.1 **Maintenance and Repair of the Access Road**. The Owner of the Rackspace Parcel shall maintain and repair, at its sole cost and expense, the Access Road, so as to keep improved portions of the Access Road, as may exist from time-to-time, at all times in a safe, sightly, good and functional condition to the same standard as the driveways on the remainder of the Rackspace Parcel; provided, however, that (i) nothing contained herein shall be deemed to obligate the Owner of the Rackspace Parcel to construct any new improvements on the Rackspace Parcel and/or redevelop the Rackspace Parcel (or any portion thereof); and (ii) the Owner of the Rackspace Parcel may dedicate the Access Road to the City of Windcrest or other applicable governmental entity, whereupon such maintenance and repair obligations shall be transferred to the appropriate governmental entity.

The Owner of the Anthon Minor Parcel shall maintain and repair, at its sole cost and expense, the Access Tract, so as to keep improved portions of the Access Tract, as may exist from time-to-time, at all times in a safe, sightly, good and functional condition to the same standard as the driveways on the remainder of the Anthon Minor Parcel.

ARTICLE 5.

Insurance and Indemnity

5.1 **Insurance**. The Owner of the Anthon Minor Parcel shall maintain, or cause to be maintained public liability insurance insuring against claims on account of lost life, bodily injury or property damage that may arise from, or be occasioned by the condition, it use or occupancy of the Access Tract and the Access Easement granted herein, or caused by such Owner, its Occupants, and the respective Permittees of such Owner and Occupant or caused by those persons for whose acts and omissions such Owner, its Occupants, and their respective Permittees are legally liable. The Owner of the Anthon Minor Parcel shall obtain insurance policies, according to the provisions hereof, covering the Access Tract and the Access Easement granted herein from a reputable insurance company or companies qualified to do business in the State of Texas; and each such policy of insurance shall have limits for loss of life or bodily injury in amounts of not less than $1,000,000.00 for each person and $1,000,000.00 for each occurrence and $1,000,000.00 for property damage for each occurrence. Such insurance may be carried under a "blanket" policy or "blanket" policies covering other properties of each respective party, and may be subject to such self-insured retentions as a Party may desire. The Owner of the Anthon Minor Parcel shall, upon written request from the Owner of the Rackspace Parcel, furnish to the Owner of the Rackspace Parcel one or more certificates of insurance evidencing the existence of the insurance required above.

ARTICLE 6.

Remedies

6.1 **Self Help and Other Remedies**. If any Party defaults in the performance of its obligations hereunder and the default is not cured within thirty (30) days following delivery of written notice to such defaulting party then the non-defaulting Party shall have the right to (i) perform such obligation on behalf of the defaulting Party, in which event such defaulting Party shall reimburse such non-defaulting party for all amounts expended by the non-defaulting party on behalf of the defaulting Party, together with interest thereon at the lesser of twelve percent (12%) per annum, or the maximum amount permitted by law from the date the amounts are expended until the date repaid; and/or (ii) exercise any other rights or remedies available to the non-defaulting Party either at law or in equity. In the event of a default by the Owner of the Anthon Minor Parcel in its performance of its obligations hereunder, the Owner of the Rackspace Parcel shall have the right to cut off such Party's access to the Access Road and/or the applicable Access Tract by erecting a fence or other barrier along the common boundary of the Rackspace Parcel and the Anthon Minor Parcel.

6.2 **Injunctive Relief**. In the event of a breach by any party hereto of any obligation of such party under this Agreement, the non-defaulting Party shall be entitled to injunctive relief mandating compliance herewith, and shall be entitled to obtain a decree specifically enforcing the performance of the obligations created hereunder. The undersigned hereby acknowledge and stipulate the inadequacy of legal remedies and irreparable harm which would be caused by the breach of this Agreement, and such non-defaulting party shall be entitled to relief by any and all other available legal and equitable remedies from the consequences of such breach. Any costs and

expenses of any such proceeding, including reasonable attorney's fees, shall be paid by the defaulting party.

6.3 **Non-Waiver**. No delay or omission of any party hereto in the exercise of any rights created hereunder shall impair such right, or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of an event of default hereunder. A waiver by any party hereto of a breach of, or default in, any of the terms and conditions of this Agreement by the other party shall not be construed to be a waiver of any subsequent breach thereof or of any other provision of this Agreement. Except as otherwise specifically provided in this Agreement, no remedy provided in this Agreement shall be exclusive, but instead all remedies shall be cumulative with all other remedies provided for in this Agreement and all other remedies at law or in equity which are available to the parties hereto.

ARTICLE 7.

Notices

7.1 **Notices**. All notices, demands, statements, and requests (collectively the "Notice") required or permitted to be given under this Agreement must be in writing and shall be deemed to have been properly given or served as of the date hereinafter specified: (i) on the date of personal service upon the Party to whom the notice is addressed or if such Party is not available the date such notice is left at the address of the Party to whom it is directed, (ii) on the date the notice is postmarked by the United States Post Office, provided it is sent prepaid, registered or certified mail, return receipt request, and (iii) on the date the notice is delivered by a courier services (including Federal Express, Express Mail, Lone Star or similar operation) to the address of the Party to whom it is directed, provided it is sent prepaid, return receipt requested. The address of the signatories to this Agreement is set forth below:

If to Rackspace:

Rackspace Hosting
Attn: General Counsel
5000 Walzem
San Antonio, Texas 78218
Telephone No.: 210-312-4700
Fax No.: 210-312-4848

With a copy to:

Steve Golden
Golden Steves Cohen & Gordon, LLP
300 Convent Street, Suite 2600
San Antonio, Texas 78205
Telephone No.: (210) 745 3700
Fax No.: (210) 745 3737

If to Anthon Minor:

Anthon Minor, Ltd.
192 E. Zink St.
New Braunfels, Texas 78130

Attn: Ted Alexander
Telephone No.: (210) 347-9326
Fax No.: _____

ARTICLE 8.

General Provisions

8.1 **Binding Effect**. The Parties hereby agree that (i) the terms, provisions and conditions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective Permittees, as well as the successors and assigns of such Persons; and (ii) the easements and restrictive covenants shall be appurtenant to and for the benefit of all the Owners and their successors and assigns and shall run with the land for the time periods specified herein. This Agreement shall be construed in accordance with the laws of the State of Texas and all obligations hereunder are performable in Bexar County, Texas. This Agreement and the rights, obligations and duties hereunder shall be fully assignable by Rackspace to any assignee or sublessee under the Rackspace Lease.

8.2 **Partial Invalidity**. If any term, covenant or condition of this Agreement or the application of it to any Person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant or condition to Persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and shall be enforced to the extent permitted by law.

8.3 **Captions**. The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants or conditions contained herein.

8.4 **Gender**. In construing the provisions of this Agreement and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

8.5 **Relationship of the Parties**. Nothing contained herein shall be construed to make the parties hereto partners or joint venturers, or render any of such parties liable for the debts or obligations of the other party hereto.

8.6 **Amendment**. This Agreement may be canceled, changed, modified or amended in whole or in part only by the written and recorded agreement of Parties hereto, or their respective successors and assigns. In no event shall any amendment of this Agreement ever require the consent or joinder of any one or more of the agents, patrons, customers, employees, licensees or invitees of the Property.

8.7 **Term**. This Agreement and the easements, rights, obligations and liabilities created hereby shall encumber the Property in perpetuity or such lesser period if and to the extent a lesser period is required by applicable law, unless all Owners and any parties owning at that

time any security interest in any of the Parcels execute and record in the Bexar County, Texas, real estate records at any time a statement terminating this Agreement.

8.8 **No Dedication**. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property to the general public or for the general public or for any public purpose whatsoever, it being the intention that this Agreement shall be strictly limited to and for the purposes herein expressed. This Agreement is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not specifically benefited by the terms and provisions hereof, nor are any easement rights granted to a party hereunder assignable to any third party.

Notwithstanding the foregoing, nothing contained in this Agreement shall prohibit the Owner of the Rackspace Parcel, its successors or assigns from dedicating or transferring, as applicable, all or any part of the easement areas on the Rackspace Parcel, including, without limitation, the Access Road, to (i) an appropriate governmental entity, the effect of which would create a public street on the easement areas so dedicated, with maintenance and repair responsibilities transferring to the appropriate governmental entity, or (ii) a property owner's association, with maintenance and repair responsibilities transferring to the property owner's association.

8.8 **Counterparts**. This Agreement may be executed in any number of counterparts and each such counterpart hereof shall be deemed to be an original instrument, but all of such counterparts shall constitute but one Agreement.

8.10 **Attorneys Fees**. In the event any legal action or proceeding for the enforcement of any right or obligations herein contained is commenced, the prevailing party in such action or proceeding shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

[Separate Signature Pages Follow]

ANTHON MINOR, LTD.,
a Texas limited partnership

By: Anthon Minor, G.P., LLC,
a Texas limited liability company,
its General Partner

By: _____
Name: _____
Title: _____

STATE OF TEXAS §
§
COUNTY OF BEXAR §

This instrument was acknowledged before me the ___ day of _____, 2012, by _____, the _____ of Anthon Minor, G.P., LLC, a Texas limited liability company, the General Partner of Anthon Minor, Ltd., a Texas limited partnership, on behalf of said limited liability company and said limited partnership.

_____
Notary Public, in and for
The State of _____

After recording return to:

Smita Bhakta
Golden Steves Cohen & Gordon, LLP
300 Convent Street, Suite 2600
San Antonio, Texas 78205

Joinder of Mortgagee

The Wells Fargo Bank, NA ("Lienholder"), is the owner and holder of indebtedness that is secured in whole or in part by liens and security interests (the "Liens") that encumber the Anthon Minor Parcel. Lienholder, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agrees to and does hereby consent to this Access Easement Agreement (the "Agreement") and agrees that a foreclosure of the Liens will not extinguish or diminish any of the easements set forth in said Agreement. Lienholder further agrees to and does hereby subordinate and make secondary and inferior, the Liens to the Agreement, provided, however, (i) the joinder of Lienholder hereto shall not in any way affect, release, diminish, impair or waive any such Liens except and only to the extent expressly and specifically stated above, and (ii) in the event of any foreclosure of the Liens, the purchaser at the sale at foreclosure (including Lienholder, if applicable) and such purchaser's heirs, executors, administrators, successors and assigns will be bound by the Agreement and will be entitled to any and all benefits of the Agreement now or hereafter accruing to any of the parties.

LIENHOLDER:

Wells Fargo Bank, NA

By: _____
Name: _____
Title: _____

THE STATE OF TEXAS §
§
COUNTY OF BEXAR §

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, the _____ of Wells Fargo Bank, NA, a national banking association, on behalf of said national banking association.

_____
Notary Public in and for
the State of Texas

Joinder of Tenant

H & L Imports, Inc, a Texas corporation ("Tenant") is the tenant of the Anthon Minor Parcel, pursuant to that certain Lease Agreement between Anthon Minor and Tenant, as amended from time to time. Tenant joins in the execution of this Agreement as the current tenant of the Anthon Minor Parcel for the purpose of subjecting the Anthon Minor Parcel to the terms, provisions and conditions of this Agreement.

TENANT:

H & L Imports, Inc.,
a Texas corporation

By: _____
Name: Man Hung Li
Title: President

THE STATE OF TEXAS §
§
COUNTY OF BEXAR §

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by Man Hung Li, the President of H & L Imports, Inc., a Texas corporation, on behalf of said corporation.

_____
Notary Public in and for
the State of Texas

Joinder of Windcrest

Windcrest Economic Development Corporation ("**Windcrest**") is the fee simple owner of the Rackspace Parcel, which is leased by Windcrest to Rackspace pursuant to that certain Ground Lease Agreement dated August 2, 2007, as amended from time to time. Windcrest joins in the execution of this Agreement as the current fee simple owner of the Rackspace Parcel for the purpose of subjecting the Rackspace Parcel to the terms, provisions and conditions of this Agreement.

WINDCREST:

WINDCREST ECONOMIC DEVELOPMENT CORPORATION

By: _____
Name: _____
Title: _____

THE STATE OF _____ §
§
COUNTY OF _____ §

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, the _____ of Windcrest Economic Development Corporation, on behalf of said corporation.

_____
Notary Public in and for
the State of _____

EXECUTED effective as of the Effective Date.

RACKSPACE US, INC.
a Delaware corporation

By: _____
Name: _____
Title: _____

THE STATE OF TEXAS §
§
COUNTY OF BEXAR §

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, the _____ of Rackspace US, Inc., a Delaware corporation, on behalf of said corporation.

_____
Notary Public in and for
The State of Texas

[Signature Pages Continue]

EXHIBIT A

BEGINNING at a 3/4" iron rod found in the east line of Interstate Highway (IH) 35/ Loop 410 (R.O.W. Varies), also being the southwest corner of said Lot 44, and being the northwest corner of Lot 36, of the Replat of Toys "R" Us Subdivision, recorded in Volume 9520, Page 187, (D.P.R.B.C.T.), for the southwest corner and POINT OF BEGINNING hereof, from which a 4" Texas Department of Transportation (TXDOT) brass disk monument found in the east line of said IH 35/ Loop 410 at station 1882+00 and offset right 213.20', bears S09°56'18"W, a distance of 454.36 feet;

THENCE, with the east line of said IH 35/ Loop 410, same being the west line of said Lot 44, N09°56'18"E, a distance of 437.50 feet to 1/2-inch iron rod found for an angle point hereof, same being the southwest corner of Lot 45 of said Replat Establishing Simon Apple Garden;

THENCE, leaving the east line of said IH 35/ Loop 410, same being the west line of said Lot 44, with the common line between said Lots 44 and 45, the following five (5) courses and distances:

1) S80°21'18"E, a distance of 217.15 feet to a PK nail found for an angle point hereof, same being the southeast corner of said Lot 45, and a southeast corner of said Lot 44;
2) N10°05'00"E, a distance of 147.36 feet to a 1/2-inch iron rod found for an angle point hereof, same being a northeast corner for said Lot 45, also being an angle point for said Lot 44;
3) N80°16'37"W, a distance of 22.47 feet to a 1/2-inch iron rod found for an angle point hereof, same being an angle point for said Lots 44 and 45;
4) N09°43'58"E, a distance of 9.05 feet to a 1/2-inch iron rod found for an angle point hereof, same being a northeast corner for said Lot 45, also being an angle point for said Lot 44;
5) N80°08'26"W, a distance of 195.02 feet to a 1/2-inch iron rod found for an angle point hereof, same being the northwest corner of said Lot 45, also being an angle point of said Lot 44, same being a point in the east line of said IH 35/ Loop 410;

THENCE, with the east line of said IH 35/ Loop 410, same being the west line of said Lot 44, N09°56'18"E, a distance of 64.23 feet to a 1/2-inch iron rod with "Vickery" cap found for an angle point hereof, same being the southwest corner of Lot 46 of said Replat Establishing Simon Apple Garden, also being an angle point for said Lot 44;

THENCE, leaving the east line of said IH35/ Loop 410, same being the west line of said Lot 44, with the common line between said Lots 44 and 46, S80°07'28"E, a distance of 225.13 feet to a 1/2-inch iron found for an angle point hereof, same being the southeast corner of said Lot 46, also being an angle point for said Lot 44;

THENCE, continuing with the common line between said Lots 44 and 46, N09°56'34"E, a distance of 230.05 feet a 1/2-inch iron rod found for an angle point hereof, same being the northeast corner of said Lot 46, same being an angle point for said Lot 44;

THENCE, crossing through said Lot 24, S80°02'51"E, a distance of 37.96 feet to a PK nail found for an angle point hereof, same being an angle point for said 11.5384 acre tract, also being an angle point for said Lot 44;

THENCE, continuing through said Lot 24, with a north line of said 11.5384 acre tract, N89°45'32"E, a distance of 103.11 feet to a PK nail found for an angle point hereof, same being an angle point of said 11.5384 acre tract, said point lies within said Lot 24;

THENCE, continuing through said Lot 24, with a west line of said 11.5384 acre tract, N00°36'38"E, a distance of 327.41 feet to a PK nail found for an angle point hereof, same being an angle point of said 11.5384 acre tract, said point lies within said Lot 24;

THENCE, continuing through said Lot 24, with a south line of said 11.5384 acre tract, N80°48'25"W, a distance of 311.55 feet to a PK nail found for an angle point hereof, same being an angle point of said 11.5384 acre tract, and being a point in the west line of said Lot 24, also being a point in the east line of said IH35/ Loop 410;

THENCE, with the west line of said Lot 24, same being the east line of said IH 35/ Loop 410, N09°56'18"E, a distance of 54.60 feet to a 1/2-inch iron rod with "Doucet & Assoc," cap set for a northwest corner hereof, same being a northwest corner of said Lot 24, and the southwest corner of Lot 22 of the Simon Subdivision recorded in Volume 7300, Page 69, (D.P.R.B.C.T.);

THENCE, with the south line of said Lot 22, and the north line of said Lot 24, N85°26'50"E, a distance of 381.62 feet to a PK nail with "Brown" shiner found for a point of curvature (P.C.) hereof, same being a P.C. for said Lot 22, also being a northwest corner and P.C. of said Lot 25;

THENCE, continuing with the southeast line of said Lot 22, and with the northwest line of said Lot 25, along a curve to the left, whose radius is 159.75 feet, whose delta is 85°23'33", at an arc length of 238.09 feet, and overall chord which bears N42°47'06"E, a distance 216.66 feet to a 1/2-inch iron rod with

"Vickery" aluminum cap found for a point of tangency (P.T.) hereof, same being a P.T. for said Lots 22 and 25;

THENCE, continuing with the west line of said Lot 22, and the east line of said Lot 25, N00°05'45"E, a distance of 249.80 to a 1/2-inch iron rod with "Vickery" cap found for a northwest corner hereof, same being a northwest corner of said Lot 25, and a northeast corner of said Lot 22, same being a point in the south line of Walzem Road/ Farm to Market (FM) 1976 (R.O.W. Varies);

THENCE, with the south line of said Walzem Road/ FM 1976, and the north line of said Lot 25, N89°47'19"E, a distance of 112.39 feet to a Mag nail with "Brown" shiner found for an angle point hereof, same being an angle point for said Lot 25, also being an angle point for said Walzem Road/ FM 1976, from which a 4" Texas Department of Transportation (TXDOT) brass disk monument found bears, S76°06'59"W, a distance of 1.29 feet;

THENCE, continuing with the south line of said Walzem Road/ FM 1976, and the north line of said Lot 25, S88°27'18"E, a distance of 120.88 feet to a Mag nail with "Doucet" washer set for an angle point hereof;

THENCE, leaving the south line of said Walzem Road/ FM 1976, same being the north line of said Lot 25, passing through said Lot 25 the next four (4) courses and distances:

1) S00°17'20"E, distance of 268.51 feet to a Mag nail with "Doucet" washer set for an angle point hereof;
2) Along a curve to the right, whose radius is 921.48 feet, whose delta is 01°33'47"", whose arc length is 25.14 feet, and whose chord bears N77°14'29"E, a distance of 25.14 feet to a Mag nail with "Doucet" washer set for a point of reverse curvature (P.R.C.) hereof;

3) Along a curve to the left, whose radius is 750.00 feet, whose delta is 09°26'18", whose arc length is 123.55 feet, and whose chord bears N73°18'14"E, a distance of 123.41 feet to a Mag nail with "Doucet" washer set for a point of compound curvature (P.C.C.) hereof;
4) Along a curve to the left, whose radius is 2010.40 feet, whose delta is 03°54'26", whose arc length is 137.10' feet, and whose chord bears N66°37'52"E, a distance of 137.07 feet to a Mag nail with "Doucet" washer set for a point of compound curvature (P.C.C.) hereof;

THENCE, continuing through said Lot 25, and in part through said Lot 44, along a curve to the left, whose radius is 500.00 feet, whose delta is 10°19'44", at an arc length of 14.77 feet passing the common line between said Lots 25 and 44, for an overall arc length of 90.14 feet, and whose overall chord bears N59°30'47"E, a distance of 90.02 feet to a Mag nail with "Doucet" washer set for a P.R.C. hereof, said point lies within said Lot 44;

THENCE, continuing in part through said Lot 44, and through said Lot 38, along a curve to the right, whose radius is 500.00 feet, whose delta is 11°52'41", at an arc length of 3.44 feet passing the common line between said Lots 44 and 38, for an overall arc length of 103.66 feet, and whose overall chord bears N60°17'16"E, a distance of 103.47 feet to a Mag nail with "Doucet" washer set for a P.T. hereof, said point lies in said Lot 38;

THENCE, continuing through said Lot 38, N16°51'51"W, a distance of 69.10 feet to a PK nail with "Brown" shiner found for an angle point hereof, same being a point in the south line of said Walzem Road/ FM 1976, also being the northern most northwest corner of said Lot 38, and the northeast corner of said Lot 44;

THENCE, with the south line of said Walzem Road/ FM 1976, same being the north line of said Lot 38, N89°44'36"E, a distance of 592.04 feet to a 1/2-inch iron rod with "Vickery" aluminum cap found for an angle point hereof, same being an angle point in the south line of said Walzem Road/ FM 1976, and an angle point in the north line of said Lot 38;

THENCE, continuing with the south line of said Walzem Road/ FM 1976, same being the north line of said Lot 38, N88°28'52"E, a distance of 17.99 feet to a "X" cut in concrete for the northern most northeast corner hereof, same being the northern most northeast corner of said Lot 38, also being the northwest corner of Lot 39 of said Replat of Subdivision Plat of Simon Subdivision;

THENCE, leaving the south line of said Walzem Road/ FM 1976, with the common line between said Lots 38 and 39 the following four (4) courses and distances:

1) S00°16'05"E, a distance of 151.24 feet to a 1/2-inch iron rod with "Vickery" aluminum cap found for an angle point hereof, same being the southwest corner of said Lot 39, and an angle point for said Lot 38;
2) N89°45'07"E, a distance of 131.79 feet to a 1/2-inch iron rod found for an angle point hereof, same being a southeast corner of said Lot 39, also being an angle point for said Lot 38;
3) N00°14'38"W, a distance of 18.06 feet to a 1/2-inch iron rod with "Vickery" cap found for an angle point hereof, same being an angle point for said Lots 38 and 39;

4) N89°37'31"E, a distance of 27.57 feet to a PK nail found for the eastern most northeast corner hereof, same being the eastern most southeast corner for said Lot 39, and the eastern most northeast corner of said Lot 38, also being a point in the west line of Lot 2, Block 1 of the Replat and Subdivision Plat Establishing Roosevelt High School Subdivision recorded in Volume 9566, Page 132, (D.P.R.B.C.T.);

THENCE, in part with the east line of Lot 38 and in part with the east line of Lot 37, both of said Replat of Simon Subdivision, and with the west line of Lot 2 of said Roosevelt High School, S00°13'42"E, at a distance of 685.73 feet passing the northeast corner of Lot 37, and being the southeast corner of Lot 38, for a total distance of 1379.71 feet to a PK Nail with "Brown" washer found for an interior ell corner hereof, said point is also an interior ell corner of said Lot 37, and being the southwest corner of said Lot 2;

THENCE, with a north line of said Lot 37, and in part with the south line of said Lot 2, N89°35'15"E, a distance of 63.93 feet to a PK with Shiner found for an exterior ell corner hereof, said point is also an exterior ell corner of said Lot 37;

THENCE, in part with an east line of said Lot 37, and in part with an east line of Lot 44 of said Replat Establishing Simon Apple Garden, S00°31'25"E, a distance of 145.30 feet to a 1/2" iron rod found for a southeast corner hereof, said point is also a southeast corner of said Lot 44 and being the northwest corner of Lot 12, Block 10 of Camelot Subdivision Unit 7, recorded in Volume 6500, Page 144 (D.P.R.B.C.T.), and being a point in the east line of a 40' City Public Service Board Easement as shown on said plat,

THENCE, with the south line of said Lot 44, and the north line of said 40' City Service Board Easement, S89°43'01"W, a distance of 39.73 feet to a 1/2" iron rod found for an interior ell corner hereof, said point is also a point on the west line of said 40' City Public Service Board Easement, and being an interior ell corner of said Lot 44;

THENCE, with the west line of said 40' City Public Service Board Easement, and a west line of said Lot 44, S00°56'32"W, a distance of 15.88 feet to a 1/2" iron rod found for an exterior ell corner hereof, said point is also an exterior ell corner of said Lot 44, and being the northeast corner of Lot 13 of said Camelot Subdivision;

THENCE, in part with the north line of Lots 13-26, Block "D" of said Camelot Subdivision, and in part with the north line of Lot 9, Block "B", of Camelot Subdivision Unit 5A, recorded in Volume 6500, Page 16 (D.P.R.B.C.T.), and in part with the north line of Lot 49 of Windsor Square Wal-Mart III recorded in Volume 9560, Page 80 (D.P.R.B.C.T.), and in part with the north line of Lot 36 of said Toys "R" Us, S89°31'43"W, a distance of 2200.44 feet to the POINT OF BEGINNING and containing 66.9915 Acre (2,918,150 sq. ft.) of land, more or less.

EXHIBIT B

BEING 2.6424 ACRES (115,104 SQUARE FEET) OF LAND OUT OF LOT 24, NEW CITY BLOCK 1250, SIMON SUBDIVISION, IN THE CITY SAN ANTONIO, BEXAR COUNTY, TEXAS, ACCORDING TO PLAT THEREOF RECORDED IN VOLUME 7800, PAGE 9 THROUGH 13, INCLUSIVE, DEED AND PLAT RECORDS OF BEXAR COUNTY, TEXAS. SAID 2.6424 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED IN METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A FOUND CAPPED ½ INCH IRON ROD FOUND FOR THE COMMON WESTERLY CORNER OF LOTS 24 AND 26 IN THE EASTERLY LINE OF INTERSTATE HIGHWAY 35 (LOOP 410) (300 FEET WIDE);

THENCE NORTH 10 DEGREES 11 MINUTES 06 SECONDS EAST, ALONG SAID EASTERLY LINE OF INTERSTATE HIGHWAY 35 (LOOP 410) A DISTANCE OF 337.40 FEET TO A 5/8 INCH IRON ROD SET FOR THE NORTHWESTERLY CORNER;

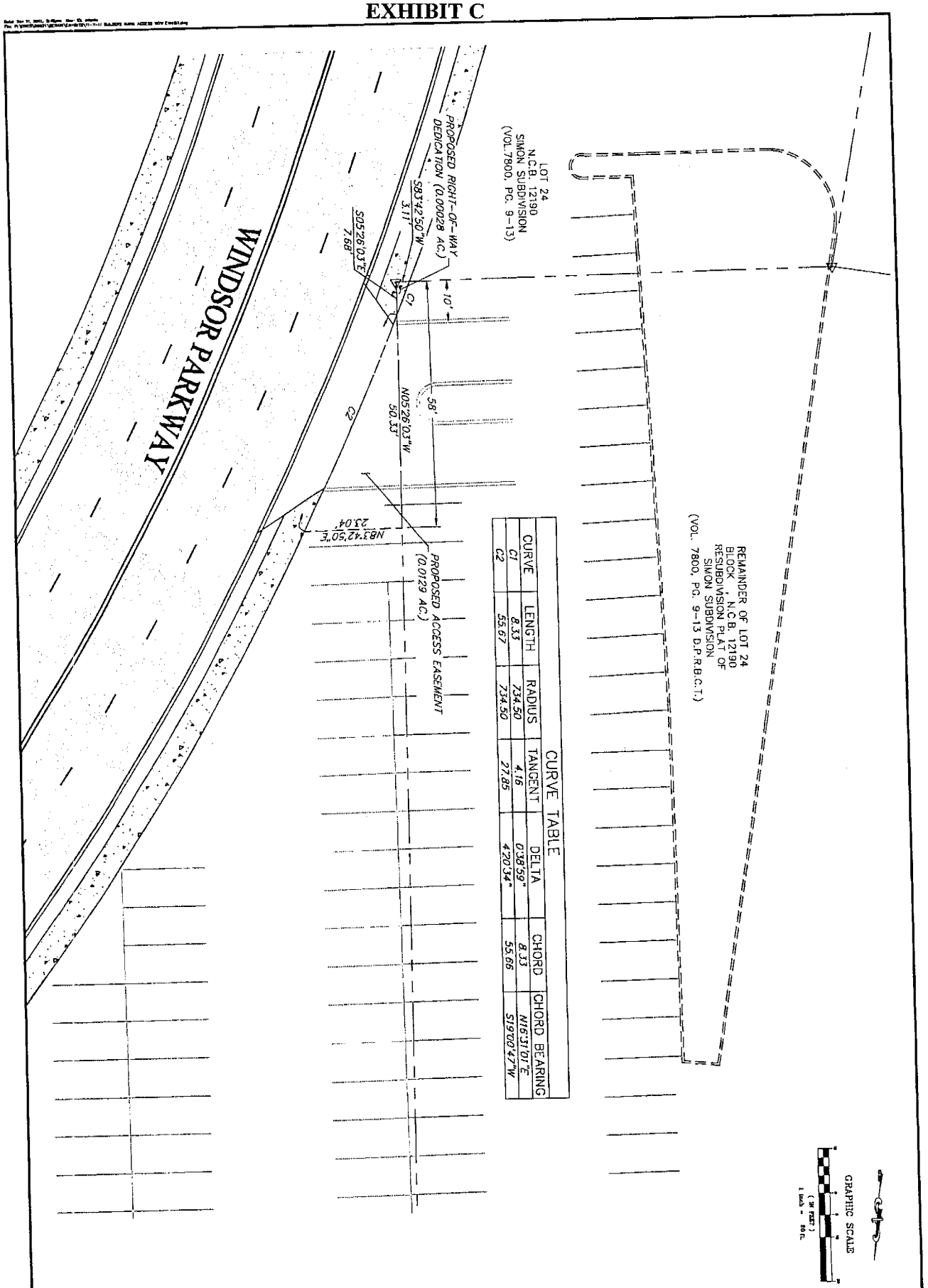
THENCE NORTH 80 DEGREES 30 MINUTES 17 SECONDS EAST, A DISTANCE OF 311.52 FEET TO A P.K. NAIL SET FOR CORNER;

THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS WEST, A DISTANCE OF 327.26 FEET TO A P.K. NAIL SET FOR THE SOUTHEAST CORNER ;

THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST, A DISTANCE OF 103.15 FEET TO A 5/8 INCH IRON ROD FOUND FOR AN ANGLE POINT;

THENCE NORTH 79 DEGREES 48 MINUTES 00 SECONDS WEST, ALONG THE COMMON LINE OF LOT 24 AND 26, A DISTANCE OF 263.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 2.6424 ACRES (115,104 SQUARE FEET) OF LAND.

EXHIBIT C



CURVE TABLE

CURVE	LENGTH	RADIUS	TANGENT	DELTA	CHORD	CHORD BEARING
C1	8.33	734.50	4.16	0°38'59"	8.33	N16°31'01"E
C2	55.67	734.50	27.85	4°20'34"	55.66	S19°00'47"W

RACKER ROAD - OLD WINDSOR PARK MALL

BUILDERS MARK
ACCESS R.O.W. EXHIBIT

CITY OF WINDCREST, TEXAS

SHEET EX1 OF 1

DON McCRARY & ASSOCIATES, INC.
ENGINEERS & SURVEYORS
323 BRIDGEPORT
SAN ANTONIO, TEXAS 78216-2602
(210) 349-2651

CHECKED
DRAWN S. HOKIN
DATED SEPTEMBER 2011
SHEET
CAD FILE

No. DATE

9025 Special /GM

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THIRD AMENDMENT OF
EASEMENT AND OPERATING AGREEMENT

This Third Amendment of Easement and Operating Agreement ("Agreement"), made and entered into as of this 16th day of July, 1985 by and among WINDSOR PARK DEVELOPMENT COMPANY LIMITED PARTNERSHIP, a Texas limited partnership ("Developer"), J. C. PENNEY PROPERTIES, INC., a Delaware corporation qualified to do business in the State of Texas ("Penney"), MONTGOMERY WARD DEVELOPMENT CORPORATION, a Delaware corporation qualified to do business in the State of Texas (Ward"), CONSTRUCTION DEVELOPERS, INCORPORATED, an Arkansas corporation qualified to do business in the State of Texas ("Condev"), DILLARD DEPARTMENT STORES, INC., a Delaware corporation qualified to do business in the State of Texas ("DDSI"), (Condev and DDSI being hereinafter collectively referred to as "Dillard"), JOSKE'S SAN ANTONIO REAL ESTATE COMPANY ("JSAREC"), a Delaware corporation qualified to do business in the State of Texas (as successor in interest to Alstores Realty Corporation ("Alstores")) and JOSKE'S, INC., a Delaware corporation (as successor in interest to Allied Stores - East, Inc.) (JSAREC and JOSKE'S, INC. are collectively referred to hereinafter as JOSKE), (Developer, Penney, Ward, Condev, DDSI, JSAREC and JOSKE'S, INC. being hereinafter collectively referred to as the "parties").

W I T N E S S E T H

WHEREAS, the parties entered into that certain Easement and Operating Agreement, dated September 10, 1974, and recorded October 1, 1974 in Volume 7451, Page 649, in the Deed Records of Bexar County, Texas; and

WHEREAS, the parties amended said Easement and Operating Agreement, by that certain Modification of Easement and Operating Agreement, dated as of May 5, 1975, and recorded October 30, 1975 in Volume 7693, Page 199, of the Deed Records of Bexar County, Texas; and

WHEREAS, the parties further amended said Easement and Operating Agreement by that certain Second Amendment of Easement and Operating Agreement, dated as of April 15, 1977 and recorded April 28, 1977 in Volume 8069, Page 704, in the Deed Records of Bexar County, Texas (said Easement and Operating Agrement, as amended, hereinafter collectively referred to as the "Operating Agreement"); and

WHEREAS, by the execution of said Operating Agreement, the parties granted to each other certain reciprocal and non-exclusive easements over, upon, across and through their respective parcels of land in Windsor Park Mall Shopping Center located in San Antonio, Texas ("Shopping Center"); and

WHEREAS, Developer desires to lease a portion of real estate to Mervyn's (the "Mervyn's Parcel") for the construction and operation thereon of a Mervyn's Department Store in the Shopping Center at the location more particularly shown on the Plot Plan, being Exhibit "G-1" attached hereto and made a part hereof; and

WHEREAS, in order for Developer to lease the Mervyn's Parcel to Mervyn's, Developer has acquired from Condev and Alstores parcels of real estate, formerly parts of the Dillard and Joske Sites (the Joske Site is now owned by JSAREC), respectively, and Alstores has acquired from Developer a parcel of real estate, formerly part of the Developer's Site; and

WHEREAS, Alstores, Condev and Developer petitioned the City of San Antonio to vacate that portion of Mordred Drive which abutted the Shopping Center and their respective Sites; and

WHEREAS, the City has approved the vacation of Mordred Drive, and the land in Mordred Drive abutting the Shopping Center

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VOL 8 2 0 PAGE 1 8 2 3

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has been conveyed by the City of San Antonio to the adjoining landowners, namely, Alstores (now JSAREC), DDSI (which has conveyed said parcel to Condev), Developer (which land shall become a part of their respective Sites and the Entire Premises,) and North East Independent School District ("School"); and

WHEREAS, Developer has leased from School a parcel of real estate adjacent to the parcels deeded to Developer, Alstores and Condev by the City for the construction of a roadway for access, to and from the Shopping Center; and

WHEREAS, Penney desires to convey, and contemporaneously herewith is conveying, a parcel of real estate to Developer, which parcel shall become a part of the Developer Site; and

WHEREAS, JSAREC desires to convey, and contemporaneously herewith is conveying, a parcel of real estate to Condev, which real estate is more particularly described in Exhibit "K" attached hereto; and

WHEREAS, as a result of the above described conveyances of real estate, the vacation of Mordred Drive and the lease of the parcel from the School, the configuration of the Developer Site, Joske Site, Penney Site, Dillard Site and Entire Premises will be modified and amended; and

WHEREAS, upon the construction of the Wendy's restaurant on a Reserved Area on the Developer Site adjacent to the Dillard Site, there was a scrivener's error in the legal description of the Reserved Area of the Developer Site and the parties desire to correct said error by having Condev and Developer exchange parcels of real estate; and

WHEREAS, the parties desire to amend the Operating Agreement to the extent necessary to recognize and permit (i) the addition of the Mervyn's Department Store Building to the Shopping Center as an additional department store and (ii) the modifications to the parking area and configuration of the above-referenced Sites; and

WHEREAS, the parties desire also to confirm their understanding that they will continue to be bound by the terms, covenants and conditions contained in the Operating Agreement to be performed by them.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements of the parties herein set forth, it is hereby agreed by and among the parties as follows:

1. Exhibit "A" to the Operating Agreement, being the survey of the Shopping Center, is hereby amended and supplemented by the addition thereto of Exhibit "A-1" attached hereto and made a part hereof.

2. Exhibit "B" to the Operating Agreement, being the legal description of the Entire Premises is hereby amended and supplemented by the addition thereto of the real estate described in Exhibit "B-1" attached hereto and made a part hereof.

3. Exhibit "C" to the Operating Agreement, being the legal description of the Penney Site, is hereby deleted therefrom, and Exhibit "C-1" attached hereto and made a part hereof is hereby substituted therefor.

4. Exhibit "E" to the Operating Agreement, being the legal description of the Dillard Site, is hereby deleted therefrom, and Exhibit "E-1" attached hereto and made a part hereof is hereby substituted therefor.

VOL. 8 2 0 PAGE 1 8 3 0

5. Exhibit "F" to the Operating Agreement, being the legal description of the Developer Site, is hereby deleted therefrom, and Exhibit "F-1" attached hereto and made a part hereof is hereby substituted therefor.

6. Exhibit "G" to the Operating Agreement, being the Plot Plan, is hereby deleted therefrom, and Exhibit "G-1" attached hereto and made a part hereof is hereby substituted therefor.

7. Exhibit "J" to the Operating Agreement, being the legal description of the Joske Site, is hereby deleted therefrom, and Exhibit "J-1" attached hereto and made a part hereof is hereby substituted therefor.

8. Section 2D-Reserved Area is hereby amended by the deletion of lines 8, 9 and that portion of line 7 in subsection (iii) beginning with the word "unless", and is hereby further amended by the addition of the following subsection (vi):

(vi) The foregoing shall constitute covenants running with the Reserved Area; provided, however, that the foregoing restrictions relating to the Reserved Area and all obligations of Developer with respect to such restrictions shall not be enforceable as against any successor to Developer's interests in the Developer Site from and after the date on which the holder of any first mortgage affecting the Developer Site forecloses its mortgage, obtains a deed in lieu thereof or otherwise obtains possession of the Developer Site without also acquiring the Reserved Area, except that the provisions of this paragraph shall be inoperative during any period while the holder of the first mortgage encumbering the Developer Site also is the holder of a first mortgage encumbering the Reserved Area. A violation of any restrictions on any Reserved Area by the owner of such tract who is not then the owner of the Developer Site shall not constitute a default by the owner of the Developer Site under this Operating Agreement, but in any event said restrictions on the Reserved Area shall be enforceable against any successor to Developer's interest in the Reserved Area. Notwithstanding anything to the contrary contained herein, no default by Developer under any of the foregoing covenants relative to the Reserved Area as set forth above in this Section 2D shall entitle any of the Department Stores to cancel or terminate this Operating Agreement or any of their covenants and obligations hereunder or in any of the easements granted hereunder, and the sole remedies of the Department Stores in the event of any such default by Developer as to the Reserved Area shall be by way of damages and injunctive relief.

9. Section 8-Developer Facilities is hereby amended by deleting from line 5 of Section 8.1(d) the term "Developer Site" and by substituting therefor the term "Entire Premises".

10. Section 9-Department Store Facilities is hereby amended by deleting from line 5 of Section 9.1(c) the term "Penney Site" and by substituting therefor the term "Entire Premises"; and by deleting from line 5 of Section 9.3(c) the term "Ward Site" and by substituting therefor the term "Entire Premises"; and by deleting from line 5 of Section 9.5(b) the term "Dillard Site" and by substituting therefor the term "Entire Premises; and by deleting from line 5 of Section 9.6A(b) the term "Joske Site" and by substituting therefor the term "Entire Premises".

11. The parties do hereby consent to the expansion and alteration of the Shopping Center as shown on the Plot Plan,

VOL 8 2 0 PAGE 1 8 3 1

including without limitation, (i) the addition of the Mervyn's Department Store Building and the operation by Mervyn's of such department store building in the Shopping Center, (ii) the addition of the Wendy's Restaurant Building and the operation by Wendy's of such restaurant building on the Reserved Area in the Shopping Center.

12. Unless otherwise herein stated, all capitalized terms in this Agreement shall have the same meaning and definitions as in the Operating Agreement.

13. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.

14. Except as herein modified and amended, all of the terms, covenants and conditions of the Operating Agreement shall remain in full force and effect and are hereby ratified and confirmed.

15. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original document, and when taken together shall form but one instrument.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the day and year first above written.

WINDSOR PARK DEVELOPMENT COMPANY LIMITED PARTNERSHIP, a Texas limited partnership

By: _____, General Partner

STATE OF INDIANA)
)SS:
COUNTY OF MARION)

This instrument was acknowledged before me on this 2ND day of MAY, 1990 by HERBERT SIMON the GENERAL PARTNER of WINDSOR PARK DEVELOPMENT COMPANY LIMITED PARTNERSHIP, a Texas limited partnership, on behalf of said partnership.

Jane P. Jossem
Notary Public

My Commission Expires:

_____

My County of Residence:

_____

JANE P JOSSEM
NOTARY PUBLIC STATE OF INDIANA
HAMILTON COUNTY
MY COMMISSION EXP. MAY 4, 1990

VOL 8 2 0 PAGE 1 8 3 2

J. C. PENNEY PROPERTIES, INC., a Delaware corporation

By: Michael Lowenkron
Michael Lowenkron, Vice President

ATTEST:

ASS'T SECRETARY

APPROVED
PBS
ATTORNEY

STATE OF TEXAS)
)ss.
COUNTY OF DALLAS)

This instrument was acknowledged before me on the 13th day of April, 1990, by Michael Lowenkron, Vice President of J. C. PENNEY PROPERTIES, INC., a Delaware corporation, on behalf of said corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

BETTY SUE WICKWARE
Notary Public
STATE OF TEXAS
My Comm. Exp. 2-05-92

Notary Public, State of Texas

VOL 4820 PAGE 1833

MONTGOMERY WARD
DEVELOPMENT CORPORATION,
a Delaware corporation

By: _____

ATTEST:

_____

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

This instrument was acknowledged before me on this 12th day of June, 1987 by Carol J. Harms and G. T. Morgan, the Vice President and Secretary, respectively, of MONTGOMERY WARD DEVELOPMENT CORPORATION, a Delaware corporation, on behalf of said corporation.

_____
Frances Catledge Notary Public

My Commission Expires:
10/25/87

VOL. 820 PAGE 1834

CONSTRUCTION DEVELOPERS, INCORPORATED
an Arkansas corporation

By: _____
Vice President

ATTEST:

_____
Secretary

DILLARD DEPARTMENT STORES, INC.,
a Delaware corporation

By: _____
Vice President

ATTEST:

_____
Secretary

STATE OF ARKANSAS)
)SS:
COUNTY OF PULASKI)

This instrument was acknowledged before me on this 27 day of April, 1990 by James I. Freeman and James E. Darr, Jr. the Vice President and Secretary, respectively, or CONSTRUCTION DEVELOPMENT, INCORPORATED, an Arkansas corporation, on behalf of said corporation.

_____
Notary Public

My Commission Expires:
9-24-93

My County of Residence:
Pulaski

STATE OF ARKANSAS)
)SS:
COUNTY OF PULASKI)

This instrument was acknowledged before me on this 27 day of April, 1990 by James I. Freeman and James E. Darr, Jr. the Vice President and Secretary, respectively, of DILLARD DEPARTMENT STORES, INC., a Delaware corporation, on behalf of said corporation.

_____
Notary Public

My Commission Expires:
9-24-93

My County of Residence:
Pulaski

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VOL 4820 PAGE 1835

JOSKE'S SAN ANTONIO REAL ESTATE COMPANY,
a Delaware corporation

By: _____
Vice President

ATTEST:

_____
Secretary

JOSKE'S, INC. a Delaware corporation

By: _____
Vice President

ATTEST:

_____
Secretary

STATE OF ARKANSAS)
COUNTY OF PULASKI) SS:

This instrument was acknowledged before me on this 27th day of April, 1990 by James L. Freeman and James E. Carr Jr the Vice President and Secretary, respectively, of JOSKE'S SAN ANTONIO REAL ESTATE COMPANY, a Delaware corporation, on behalf of said corporation.

Karen J. Benson
Notary Public

My Commission Expires:
February 4, 1997

My County of Residence:
Pulaski

STATE OF ARKANSAS)
COUNTY OF PULASKI) SS:

This instrument was acknowledged before me on this 27th day of April, 1990 by James L. Freeman and James E. Carr Jr the Vice President and Secretary, respectively, of JOSKE'S, INC., a Delaware corporation, on behalf of said corporation.

Karen J. Benson
Notary Public

My Commission Expires:
February 4, 1997

My County of Residence:
Pulaski

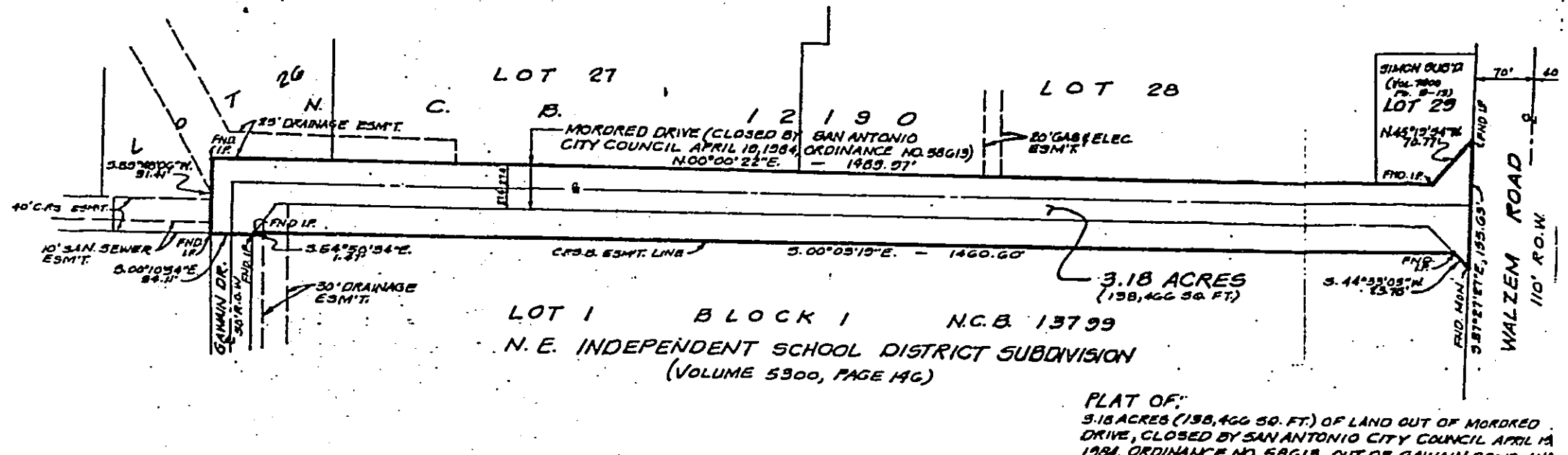
030890\NM\JOSKES.TAEOA

VOL 4820 PAGE 1836

Return To:
Stewart Title Co.
700 N. St. Mary's Suite 125
San Antonio, Texas 78205
512-226-5234

SCALE: 1" = 100'

SIMON SUBDIVISION
(VOL. 8506, PG. 204-206)



LOT 1 BLOCK 1 N.C.B. 13799
N.E. INDEPENDENT SCHOOL DISTRICT SUBDIVISION
(VOLUME 5300, PAGE 146)

PLAT OF:
3.18 ACRES (138,466 SQ. FT.) OF LAND OUT OF MORDRED DRIVE, CLOSED BY SAN ANTONIO CITY COUNCIL APRIL 19, 1984, ORDINANCE NO. 58613, OUT OF GAWAIN DRIVE AND ALSO BEING OUT OF LOT 1, BLOCK 1, N.C.B. 13799, N.E. INDEPENDENT SCHOOL DISTRICT SUBDIVISION DESCRIBED BY PLAT RECORDED IN VOLUME 5300, PAGE 146 OF THE DEED AND PLAT RECORDS OF BEXAR COUNTY, TEXAS.

STATE OF TEXAS:

COUNTY OF BEXAR:

I hereby certify that the above plat is true and correct according to a survey made on the ground on Oct. 20, 1984 and that this survey correctly shows the location of all visible encroachments of easements, improvements or buildings onto, or from adjoining properties, and that this survey conforms to the current Texas Surveyors Association Standards and Specifications for a Category 1A, Condition II Survey.

RECORDER'S MEMORANDUM

AT THE TIME OF RECORDATION, THIS INSTRUMENT WAS FOUND TO BE INADEQUATE FOR THE BEST PHOTOGRAPHIC REPRODUCTION BECAUSE OF ILLEGIBILITY, CARBON OR PHOTO COPY, DISCOLORED PAPER, ETC.

EXHIBIT A-1

Exhibit "B-1"

RECORDER'S MEMORANDUM
AT THE TIME OF RECORDATION, THIS INSTRUMENT WAS FOUND TO BE INADEQUATE FOR THE BEST PHOTOGRAPHIC REPRODUCTION BECAUSE OF ILLEGIBILITY, CARBON OR PHOTO COPY, DISCOLORED PAPER, ETC.

VICKREY & ASSOCIATES, Inc.
CONSULTING ENGINEERS & SURVEYORS

3.18 Acre Tract

METES AND BOUNDS DESCRIPTION

FOR

3.18 acres (138,466 square feet) of land being out of Mordred Drive, closed by San Antonio City Council April 19, 1984, Ordinance No. 58513, out of Gawain Drive and also being out of Lot 1, Block 1, NCB 13799, N.E. Independent School District Subdivision described by plat recorded in Volume 5300, Page 146, of the Deed and Plat Records of Bexar County, Texas, said 3.18 acres of land being more particularly described as follows, to wit:

Beginning: at a point in the south right-of-way line of Walzem Road for the northwest corner of the herein described tract, said point also being a northeast corner of Lot 29, NCB 12190, Simon Subdivision described by plat recorded in Volume 7800, Pages 9-13 of the Deed and Plat Records of Bexar County, Texas;

Thence: S 87° 27' 27" E, 155.63 feet along and with the south right-of-way line of Walzem Road to a point for the northeast corner of the herein described tract, said point also being in the north line of said N.E. Independent School District Subdivision;

Thence: S 44° 33' 05" W, 23.73 feet to a point being in an easterly line of a 40 foot C.P.S.B. easement;

Thence: S 00° 03' 19" E, 1460.60 feet along and with the easterly line of said 40 foot C.P.S.B. easement to a point in the north right-of-way line of Gawain Drive;

Thence: S 54° 50' 34" E, 1.47 feet to a point;

Thence: S [illegible] 51" E, 54.11 feet to a point in the south right-of-way line of Gawain Drive for the southeast corner of the herein described tract;

Thence: S 89° 48' 06" W, 91.41 feet to a point being in the east line of Simon Subdivision described by Plat recorded in Volume 9506, Pages 201-205 of the Deed and Plat Records of Bexar County, Texas and also being the west line of said Mordred Drive;

Thence: N 00° 00' 22" E, 1439.37 feet to a point at the southeast end of a cutback at the intersection of said Mordred Drive and Walzem Road;

Thence: N 45° 19' 54" W, 70.77 feet to the POINT OF BEGINNING, containing 3.18 acres (138,466 square feet) of land, more or less.

Job No. 0793-37-62/477
MM/vj
October 25, 1981

7004 Blanco Road • Suite 103 • San Antonio, Texas 78216 • 512—349-3271

VICKREY & ASSOCIATES, Inc.
CONSULTING ENGINEERS

LEGAL DESCRIPTION

for

J.C. PENNEY PARCEL

11.088 acre tract of land out of the Gertrude Rodriguez Survey No. 132, being out of Lot 25, NCB 12190 out of the Simon Subdivision, as recorded in Volume 7800, Pages 9-13 in the Deed and Plat Records of Bexar County, Texas, said 11.088 acres of land being more particularly described as follows, to wit:

Beginning: at a point in the south line of FM 1976 (Walzem Road), said point being the northeast corner of Lot 22, NCB 12190 and the northwest corner of the herein described tract;

Thence: along the south right-of-way line of F.M. 1976 (Walzem) Road and the north line of the herein described tract as follows:

S 89° 59′ 55" E, 112.33 feet to a found highway monument;

S 88° 12′ 41" E, 378.46 feet to an iron pin set for the northeast corner of the herein described tract;

Thence: with the east line of the herein described tract as follows:

S 00° 00′ 00" W, 149.77 feet to an iron pin set;

S 90° 00′ 00" E, 24.92 feet to an iron pin set;

S 00° 00′ 00" W, 557.43 feet to an iron pin set;

Thence: N 90° 00′ 00" E, 181.21 feet, the last 114.00 feet being with a north line of Lot 26 out of said Simon Subdivision and an east line of Lot 25 to an iron pin set;

Thence: S 00° 00′ 00" W, 206.00 feet to an interior building corner for the southeast corner of the herein described tract;

Thence: S 90° 00′ 00" W, 494.00 feet with the south line of the herein described tract and the north line of said Lot 26 to an exterior building corner on the east line of Lot 24 out of said Simon Subdvision;

Thence: N 00° 00′ 00" E, 235.00 feet with the west line of the herein described tract and the east line of said Lot 24 to a found nail with cap;

EXHIBIT "C-1"

VOL 4820 PAGE 1839

Thence: S 90° 00′ 00" W, 172.00 feet with the south line of the herein described tract and the north line of said Lot 24 to a found nail with cap;

Thence: N 00° 00′ 00" E, 140.00 feet with the west line of the herein described tract and the east line of said Lot 24 to a found nail with cap;

Thence: S 90° 00′ 00" W, 180.09 feet with the south line of the herein described tract and the north line of said Lot 24 to a found nail with cap;

Thence: N 00° 00′ 00" E, 141.68 feet with the west line of the herein described tract and the east line of said Lot 24 to an iron pin set;

Thence: 238.02 feet with the north line of the herein described tract and the south line of said Lot 22 and with the arc of a curve to the left from a tangent bearing N 85° 43′ 06" E, said curve having a radius of 159.75 feet and a central angle of 85° 22′ 00" to an iron pin found for a point of tangency;

Thence: N 00° 21′ 06" E, 250.01 feet with the west line of the herein described tract and the east line of said Lot 22 to an iron pin found on the south right-of-way line of F.M. 1976 (Walzem) Road for the POINT OF BEGINNING containing 11.088 acres of land, more or less.

Job No. 0793-05-24-77
RK/SH/lr/mb#4.30
June 7, 1989
REVISED: April 16, 1990

VOL 4820 PAGE 1840

VICKREY & ASSOCIATES, Inc.
CONSULTING ENGINEERS

LEGAL DESCRIPTION

for

DILLARDS PARCEL

13.745 acres of land out of the Gertrude Rodriguez Survey No. 132, being out of Lots 28 and 29, NCB 12190 out of the Simon Subdivision as recorded in Volume 9506 Pages 204-206 in the Deed and Plat Records of Bexar County, Texas, and being a portion of Mordred Drive as Quit Claimed in Volume 3352, Page 1902 in the Deed and Plat Records of Bexar County, Texas, said 13.745 acres of land being more particularly described as follows, to wit:

Beginning: at an iron pin set on the south right-of-way line of FM 1976 (Walzem) Road for the northwest corner of the herein described tract and the northeast corner of Lot 25, NCB 12190, out of Simon Subdivision as recorded in Volume 9506, Pages 204-206 in the Deed and Plat Records of Bexar County, Texas;

Thence: S 89° 59′ 55" E, 592.00 feet along the south right-of-way line of Walzem Road and with the north line of the herein described tract to an iron pin found for the northeast corner of said Lot 28 and the northwest corner of said Lot 29;

Thence: N 88° 41′ 55" E, 18.00 feet along the southerly right-of-way line of Walzem Road and the north line of said Lot 29 to an iron pin set for the northeast corner of the herein described tract;

Thence: S 00° 00′ 00" W, 151.08 feet to an iron pin set;

Thence: N 90° 00′ 00" E, 131.93 feet to an iron pin set in the west line of the Quit Claimed Morded Drive;

Thence: N 00° 00′ 22" E, 18.00 feet with the west line of the Quit Claimed Morded Drive and and the southeast corner of Lot 29 to an iron pin found;

Thence: N 90° 00′ 00" E, 27.50 feet to an iron pin set in the centerline of said Quit Claimed Morded Drive;

Thence: S 00° 00′ 22" W, 685.72 feet with the centerline of said Quit Claimed Morded Drive to a found nail with cap;

Thence: N 90° 00′ 00" W, 27.50 feet to a nail with cap found in the West line of said Quit Claimed Morded Drive and the southeast corner of said Lot 28 and the northeast corner of Lot 27, NCB 12190 as recorded in Simon Subdivision in Volume 9506, Pages 204-206 in the Deed and Plat Records of Bexar County, Texas;

Thence: S 00° 00′ 22" W, 236.39 feet to a found nail with cap;

EXHIBIT "E-1"

VOL 4820 PAGE 1841

Thence: N 90° 00′ 00" W, 344.39 feet to a found nail with cap;

Thence: N 00° 00′ 00" E, 110.50 feet, the last 49.11 feet being with north line of said Lot 27 and east line of Lot 26, NCB 12190 as recorded in said Simon Subdivision, to a point in a south line of said Lot 26 and the north line of said Lot 27 to an iron pin found;

Thence: N 90° 00′ 00" E, 165.90 feet with a south line of said Lot 26 and a north line of said Lot 27 to a cross found in concrete;

Thence: N 00° 00′ 00" E, 232.00 feet with an east line of said Lot 26 and the first 155.89 feet with a west line of said Lot 27 and the last 76.11 feet with a west line of said Lot 28 to a found nail with cap;

Thence: N 90° 00′ 00" W, 165.90 feet with the south line of the herein described tract and the north line of said Lot 26 to a cross found in concrete;

Thence: N 00° 00′ 00" E, 108.89 feet with the west line of the herein described tract and the east line of said Lot 26 to a cross found in concrete;

Thence: N 90° 00′ 00" W, 465.00 feet with the south line of the herein described tract and the north line of said Lot 26 to a set nail with cap on the east line of Lot 25, NCB 12190;

Thence: along the westerly line of the herein described tract and the easterly line of said Lot 25 as follows:

N 00° 00′ 00" E, 500.00 feet to an iron pin set;

N 60° 00′ 00" E, 78.00 feet to an iron pin set;

N 00° 00′ 00" E, 64.40 feet to an iron pin set on the south right-of-way line of Walzem Road for the northwest corner of the herein described tract and the northeast corner of said Lot 25 and to the POINT OF BEGINNING containing 13.745 acres of land more or less;

Job No. 0793-05-24-77
SH/CD/RK/lr/mb#4.33
July 22, 1983
REVISED: July 29, 1983
REVISED: June 7, 1989
REVISED: April 16, 1990

VOL 4820 PAGE 1842

VICKREY & ASSOCIATES, Inc.
CONSULTING ENGINEERS

LEGAL DESCRIPTION

for

DEVELOPERS PARCEL

26.280 acres of land out of the Gertrude Rodriguez Survey No. 132, being out of Lots 25, 26, 27, and 28, NCB 12190 out of the Simon Subdivision as recorded in Volume 9506, Pages 204-206 in the Deed and Plat Records of Bexar County, Texas, said 26.280 acres of land being more particularly described as follows, to wit:

Beginning: at an iron rod found on the east right-of-way line of IH-35 for the southwest corner of the herein described tract;

Thence: N 10° 11′ 06" E, 889.11 feet with the west line of the herein described tract and the east right-of-way line of IH-35 to a set nail with cap for the northwest corner of the herein described tract and the southwest corner of Lot 24, NCB 12190;

Thence: S 79° 48′ 54" E, 263.00 feet with the north line of the herein described tract and the south line of said Lot 24 to a found nail with cap;

Thence: S 11° 47′ 28" W, 529.53 feet with the east line of the herein described tract and the west line of said Lot 24 to a found nail with cap;

Thence: with the northerly line of the herein described tract and the southerly line of said Lot 24 as follows:

S 58° 30′ 00" E, 68.00 feet to a found nail with cap;

N 90° 00′ 00" E, 245.15 feet to a found nail with cap;

S 00° 00′ 00" E, 34.92 feet to an iron pin found;

N 90° 00′ 00" E, 138.60 feet to a set nail with cap;

S 00° 00′ 00" E, 25.00 feet to a found nail with cap;

N 90° 00′ 00" E, 209.40 feet to a set nail with cap for an interior corner of the herein described tract and the southeast corner of said Lot 24;

Thence: N 00° 00′ 00" E, 558.00 feet with the west line of the herein described tract and the east line of said Lot 24 to an exterior building corner for the northeast corner of the herein described tract and the southwest corner of Lot 25, NCB 12190;

EXHIBIT "F-1"

VOL 4820 PAGE 1843

Thence: N 90° 00′ 00" E, 494.00 feet with the north line of the herein described tract and the south line of said Lot 25 to an interior building corner;

Thence: N 00° 00′ 00" E, 206.00 feet with the west line of the herein described tract and the east line of said Lot 25 to an interior building corner;

Thence: N 90° 00′ 00" W, 181.21 feet, the first 114.00 feet with a line of said Lots 26 and Lot 25 to an iron pin set;

Thence: N 00° 00′ 00" E, 557.43 feet for an interior corner to an iron pin set;

Thence: N 90° 00′ 00" W, 24.92 feet for an interior corner to an iron pin set;

Thence: N 00° 00′ 00" E, 149.77 feet to an iron pin set in the south line of Walzem Road;

Thence: with the south line of Walzem Road as follows:

S 88° 12′ 41" E, 121.74 feet to a highway monument found;

S 89° 59′ 55" E, 38.00 feet to a point being the northwest corner of said Lot 28 and the northeast corner of said Lot 25 and to an iron pin set;

Thence: with the west line of said Lot 28 and the east line of said Lot 25 as follows:

S 00° 00′ 00" E, 64.40 feet to an iron pin set;

S 60° 00′ 00" w, 78.00 feet to an iron pin set;

S 00° 00′ 00" E, 500.00 feet to a found nail with cap in the north line of said Lot 26;

Thence: N 90° 00′ 00" E, 465.00 feet with the north line of the herein described tract and the south line of said Lot 28 to a cross found in concrete for the northeast corner of the herein described tract;

Thence: S 00° 00′ 00" E, 108.89 feet with the east line of the herein described tract and the west line of said Lot 28 to a cross found in concrete;

VOL 4820 PAGE 1844

Thence: N 90° 00′ 00" E, 165.90 feet with the north line of the herein described tract and the south line of said Lot 28 to a found nail with cap;

Thence: S 00° 00′ 00" E, 232.00 feet with the east line of the herein described tract and the west line of said Lot 28 and Lot 27, NCB 12190, passing the northwest corner of said Lot 27 at 76.11 feet to a cross found in concrete;

Thence: N 90° 00′ 00" W, 165.90 feet with the south line of the herein described tract and the north line of said Lot 27 to iron pin found;

Thence: S 00° 00′ 00" E, 49.11 feet with the east line of the herein described tract and the west line of said Lot 27 to a found nail with cap;

Thence: N 90° 00′ 00" W, 235.00 feet with the south line of the herein described tract and the north line of said Lot 27 to an interior building corner;

Thence: with the easterly line of the herein described tract and the westerly line of said Lot 27 as follows:

S 56° 18′ 36" W, 86.53 feet to an interior building corner;

S 00° 00′ 00" E, 209.00 feet to an exterior building corner;

N 90° 00′ 00" E, 107.00 feet to an exterior building corner;

S 00° 00′ 00" E, 118.00 feet to a cross set in concrete;

N 90° 00′ 00" E, 30.00 feet to a cross set in concrete;

S 00° 00′ 00" E, 228.72 feet to a set nail with cap;

Thence: N 89° 46′ 08" E, 605.93 feet with the north line of the herein described tract and the south line of said Lot 27 to an iron pin found;

Thence: S 00° 10′ 54" E, 62.48 feet with the east line of the herein described tract to an iron pin found;

Thence: S 89° 46′ 10" W, 40.00 feet to an iron pin found;

VOL 4820 PAGE 1845

Thence: S 00° 10′ 54" E, 16.00 feet to an iron pin found for the southeast corner of the herein described tract and for the northeast corner of Lot 13, NCB 13190, Camelot Subdivision Unit 7;

Thence: S 89° 46′ 08" W, 2200.19 feet along the south line of the herein described tract and the north line of said Camelot Subdivision Unit 7 to the POINT OF BEGINNING, containing 24.29- acres of land, more or less.

Job No. 0793-05-24-77
CD/RK/SH/lr/mb#4.31
July 22, 1983
REVISED: July 29, 1983
REVISED: March 8, 1984
REVISED: June 7, 1989
REVISED: April 16, 1990

VOL 4820 PAGE 1846

interior traffic signs, markings, etc. are subject to the prior written approval of the Department Stores. All of the Department Stores.

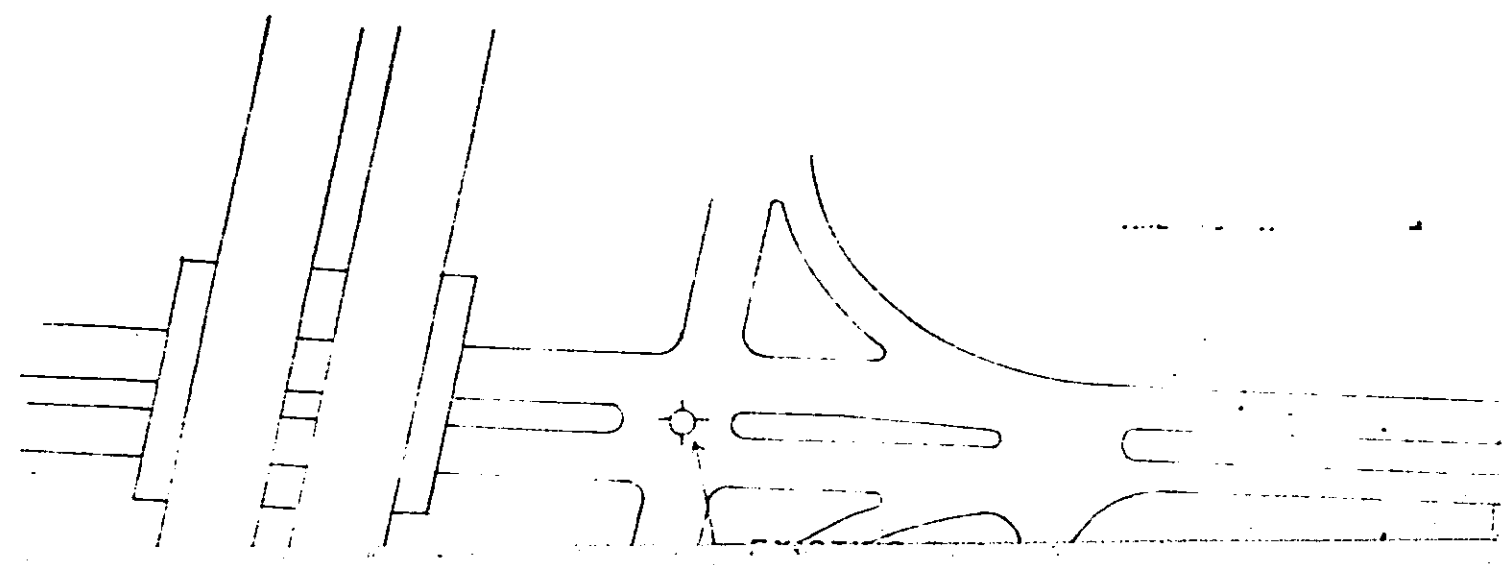
The parties agree that all Sewers, Mains and Lines in the Shopping Center shall be underground (including those between the Department Store Main Stores and Additional Buildings).

Developer agrees that final overall design of Air Conditioned Mall, including without limitation, general decor, lighting, clerestory ceiling height, dimensions, all materials, signs (other than flat lettered store signs attached to the building fronts provided such signs do not flash, scintillate, make noise or emit smoke), location of planters and other ornamental furnishings, benches, stairways, escalators, kiosk courts or plazas and columns are subject to prior written approval of the Department Stores.

Developer agrees that the location and decorative screening of trash storage areas are subject to the Department Stores' prior written approval.

The parties agree that no roof mounted equipment will be exposed on the buildings in the Shopping Center. The parties agree to provide screens strong enough to screen miscellaneous vents and equipment from view on the buildings and agree to provide additional building screens [illegible] around all cooling towers and other major equipment. The [illegible] equipment and services at grade will be properly screened to the Department Stores' prior written approval.

vol 4820 page 1847



RECORDER'S MEMORANDUM
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agreed that all approval rights of the Depa nt Stores set ly until the Termination Date of this Agreement as to the t.

d warrants that no setback lines are required to ma unless specifically shown on this Plot Plan.

d agrees that the Parking Areas shall have minimum 1½ slope to storm catch basins; maximum 5% slope; and maximum 5% unless otherwise specifically shown on the Design Plan.

vide a minimum heavy duty pavement for all truck dock ar ays at the Shopping Center and medium duty pavement elsewh. This design to be per local practices.

vide water supply and pressure adequate for all sprinkler opping Center (including, without limitation, water towers, in e with the requirements of Factory Mutual and the Department

ment of fences, screens, transformer vaults, etc. are subject pproval of the Department Stores.

all paving shall be curbed to provide finished appearance. are not curbed by the time the Shopping Center is opened for shall be curbed at Developer's sole cost and expense, to earance to the Shopping Center.

only off-site when unusual street conditions exi they must be clearly indicated and noted on this improvements will be made by Developer to eliminate

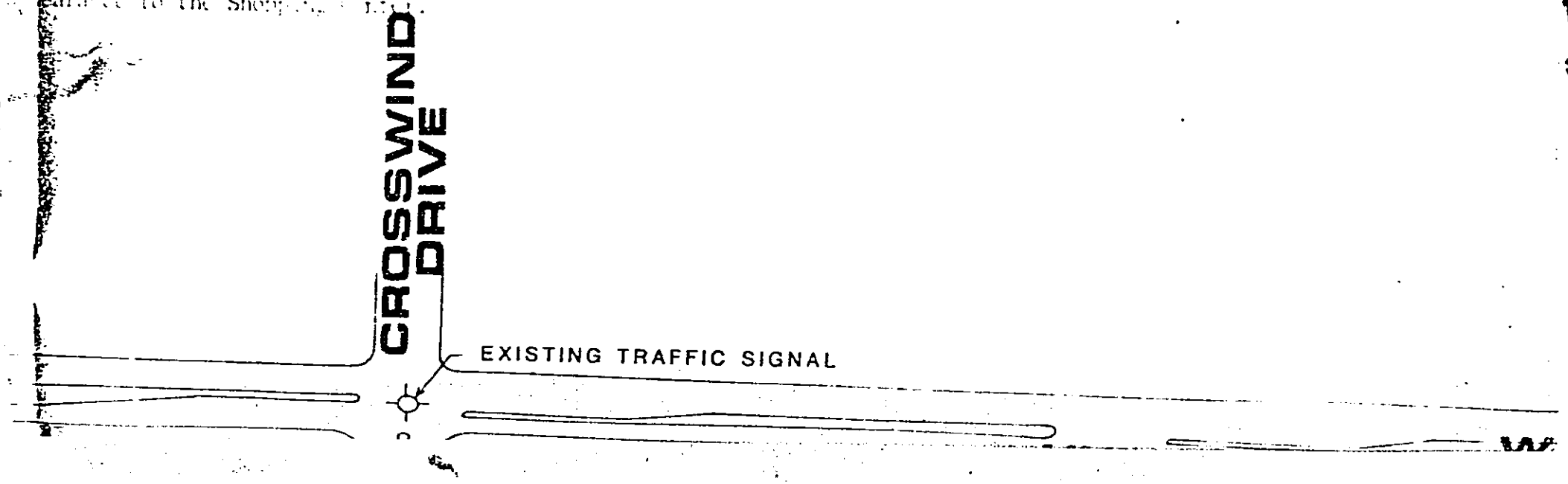
Q. Developer agrees that all property controlled by within 500 yards of the Shopping Center will be s provisions of Section 2F of the Easement and Oper

R. No building or buildings except the Department St except as indicated on the Plot Plan, or desir lesser of the second floor exterior wall of the Pr except for central courts and malls.

S. The parties agree that the Parking Area lighting s candles minimum maintained throughout at all times after closing and at all times thereaft illumination for the Parking Area shall provide (25% percent of the number of lighting units insta distributed.

T. No kiosks are permitted in the Common Areas, and all such kiosks shall not exceed feet in tot exceed 200 square feet in total area and not exceed feet in length. The location of all kiosks shall not be less than 15 feet from any Department fire approved by the Department of

WOL 4820 PAGE 1848



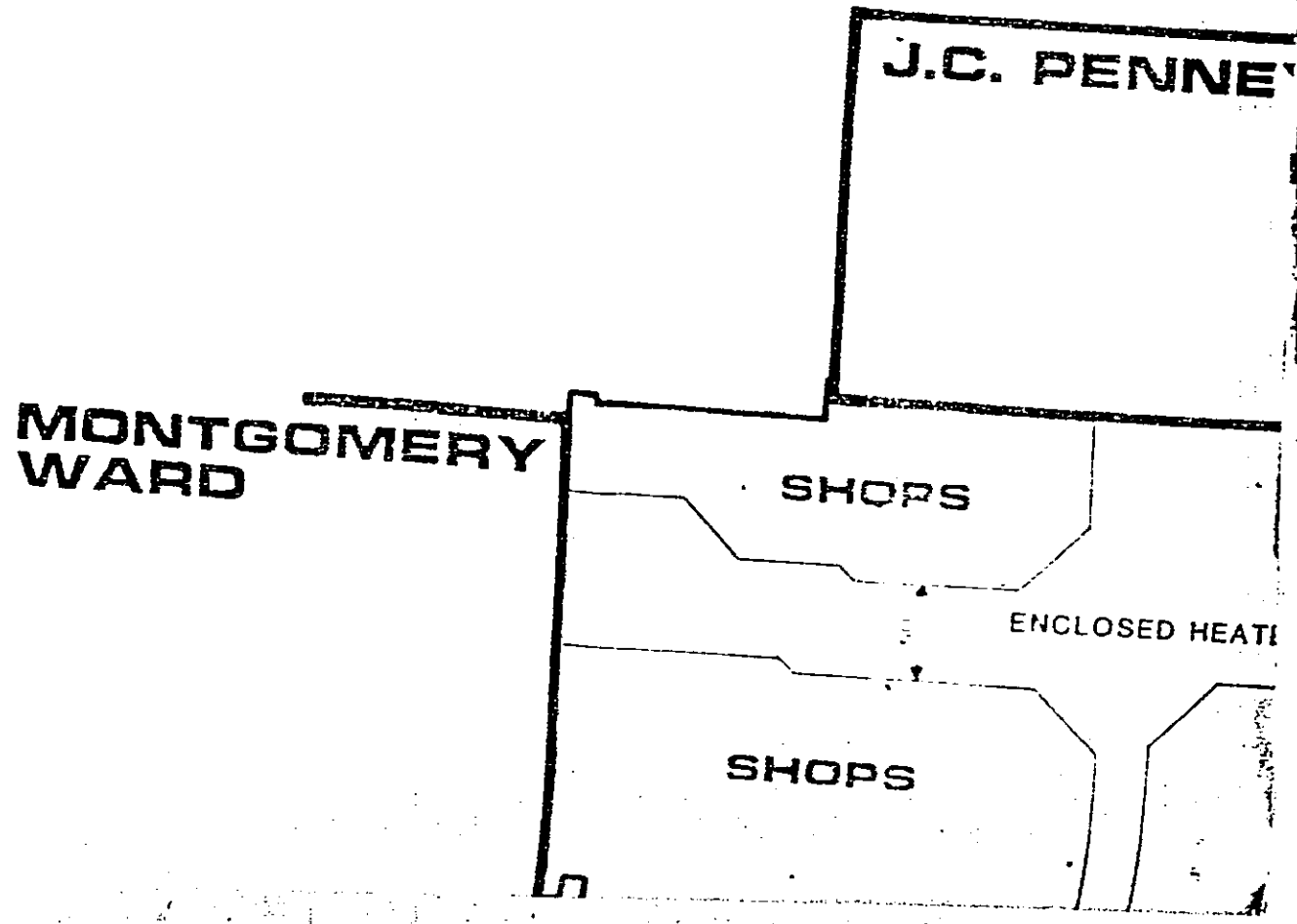
y the Department Stores and then
ost. If such conditions do exist,
Plot Plan and additional off-site
ite such open storm drains.

it (both directly and indirectly)
ainained in accordance with the
ati Agreement.

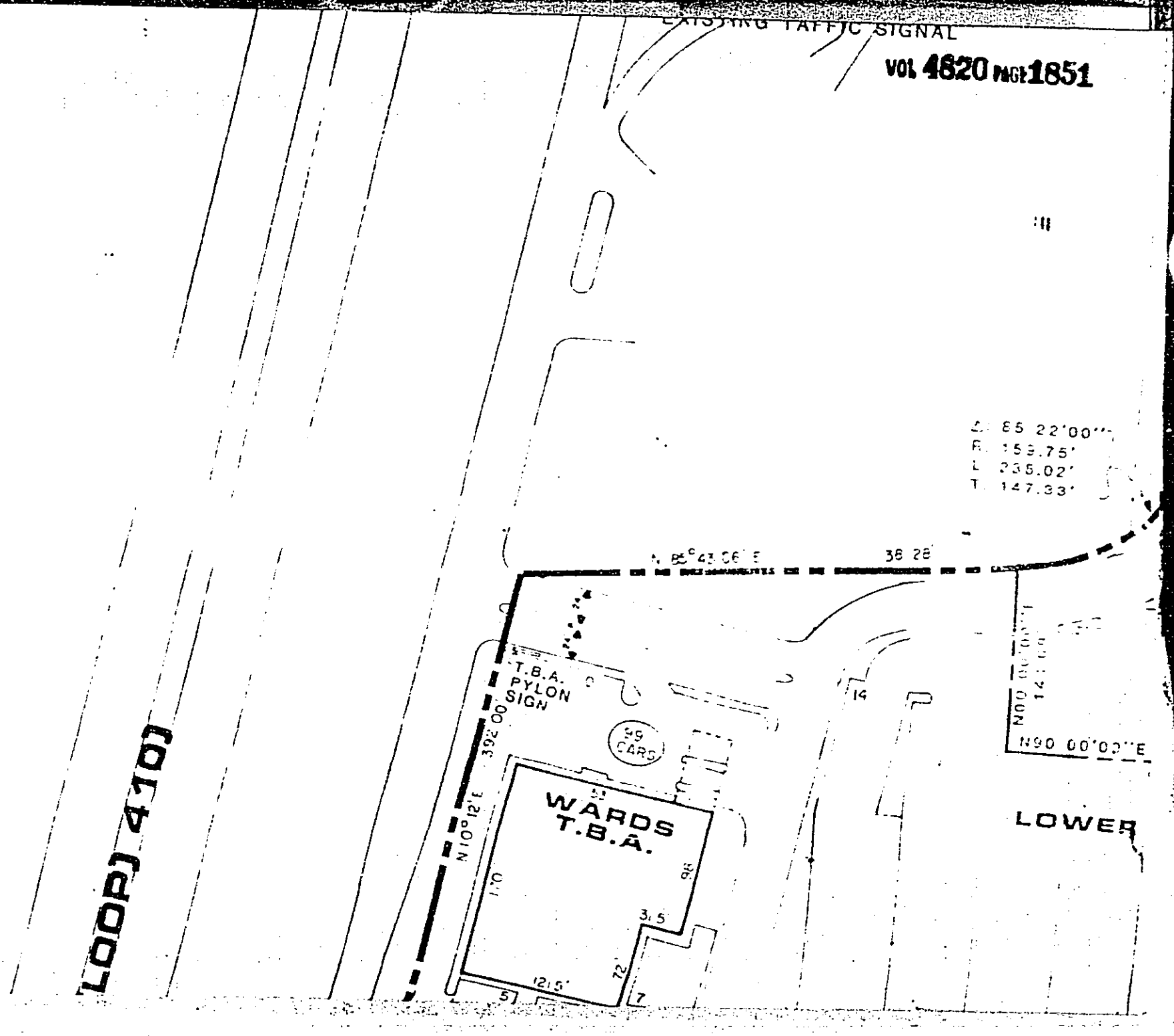
ore Main Store Buildings (and
n Plan) shall be higher than the
enn Main Store Building or 40'-00",

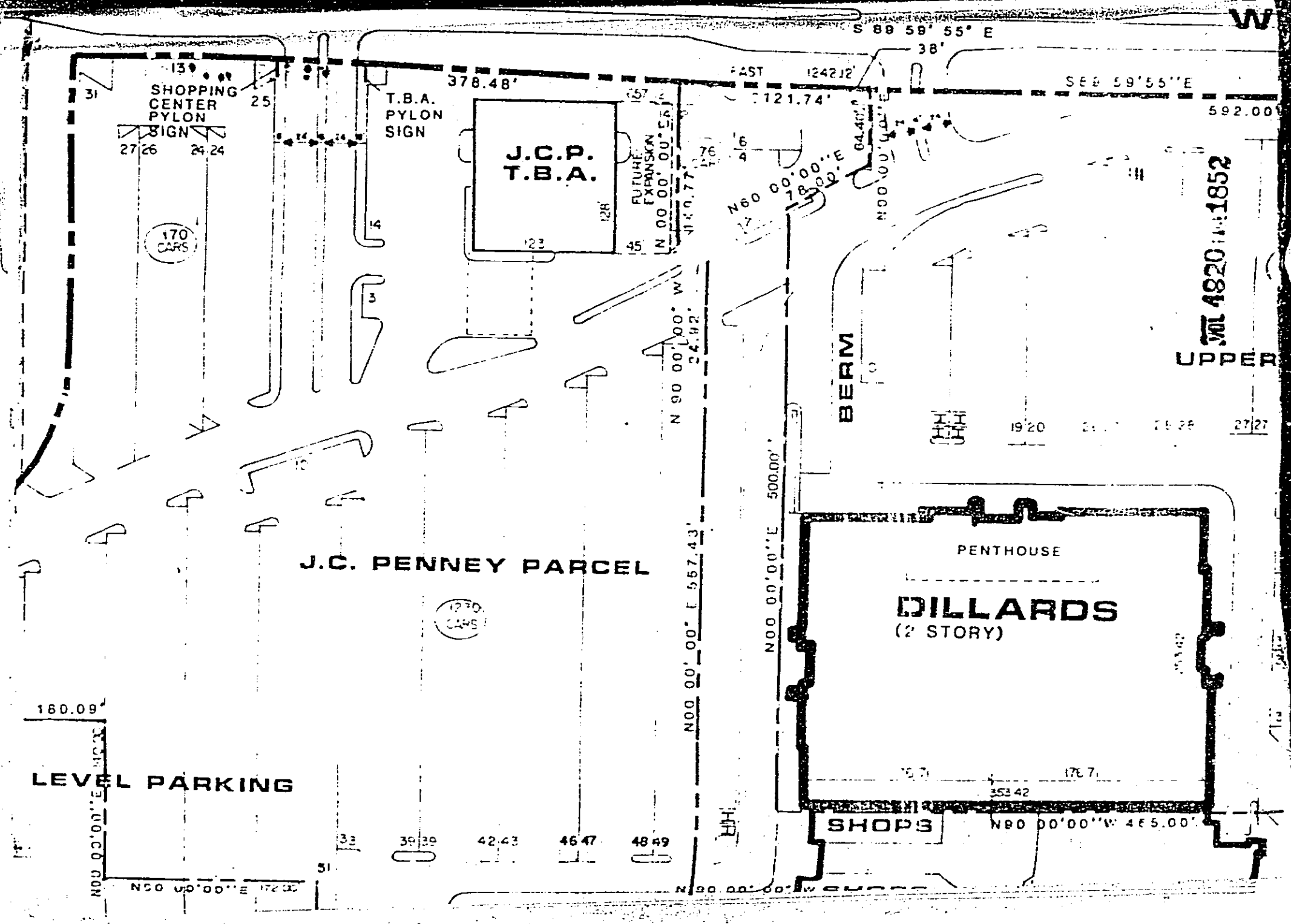
sha be one and one-half (1½) feet
e ent from a time one (1) hour
er until daylight when the
d to not less than twenty-five
alled in the Parking Area uniformly.

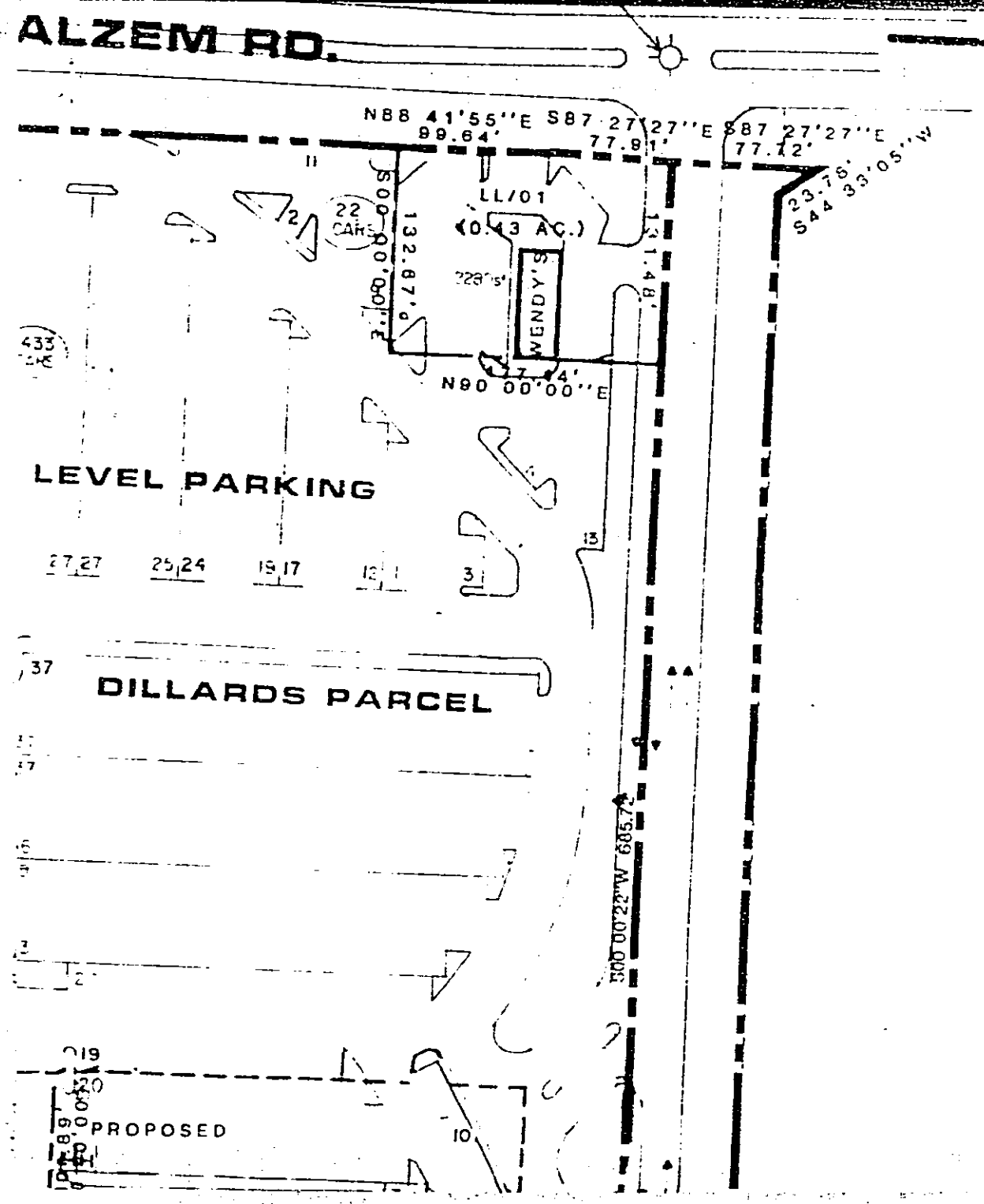
ex(cpt in the air conditioned Mall
al height including signs, or
dimensions of 10 feet in width
to be situated in the air condi-
Store Main Store Building shall



EXISTING TRAFFIC SIGNAL


EXISTING TRAFFIC SIGNAL
Δ 85 22'00"
R 153.75'
L 235.02'
T 147.33'
N 85°43'06" E
38.28'
T.B.A. PYLON SIGN
N10°12'E
392.00'
99 CARS
WARDS T.B.A.
110'
98'
31.5'
72'
121.5'
5'
7'
14'
N90 00'00"E
LOWER
LOOP 410


S 89 59' 55" E
38'
SHOPPING CENTER PYLON SIGN
T.B.A. PYLON SIGN
378.48'
J.C.P. T.B.A.
FUTURE EXPANSION
N 00 00' 00" E
N 90 00' 00" W
N 90 00' 00" E
S 89 59' 55" E
592.00'
BERM
UPPER
170 CARS
J.C. PENNEY PARCEL
N 90 00' 00" E 567.43'
N 00 00' 00" E
500.00'
PENTHOUSE
DILLARDS
(2 STORY)
160.09'
LEVEL PARKING
N 00 00' 00" E
N 90 00' 00" E
SHOPS
N 90 00' 00" W 465.00'
N 90 00' 00" W



VOL 4820 PAGE 1853

UPPER LE

LAND

TOTAL NUMBER

BUILDING AREA

DILLARDS

J.C. PENNEY CO.

MONTGOMERY W

JOSKES

MERVYNS

MISC. SMALL SHC

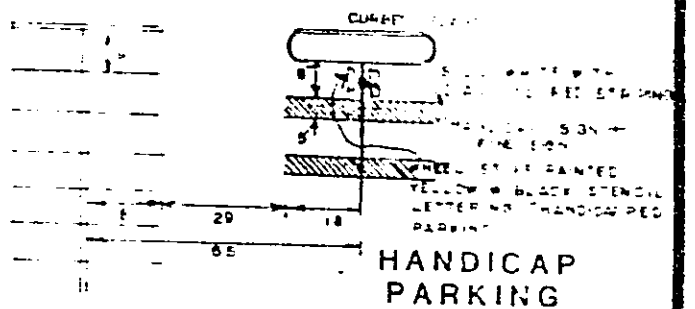
TOTAL G.L.

:VEL MALL PLAN

OF ACRES IN CENTER 73.9 ACRES

	180,048
MAIN & T.B.A.	165,432
/ARD MAIN & T.B.A.	197,983
	130,912
	82,045
PS	366,405

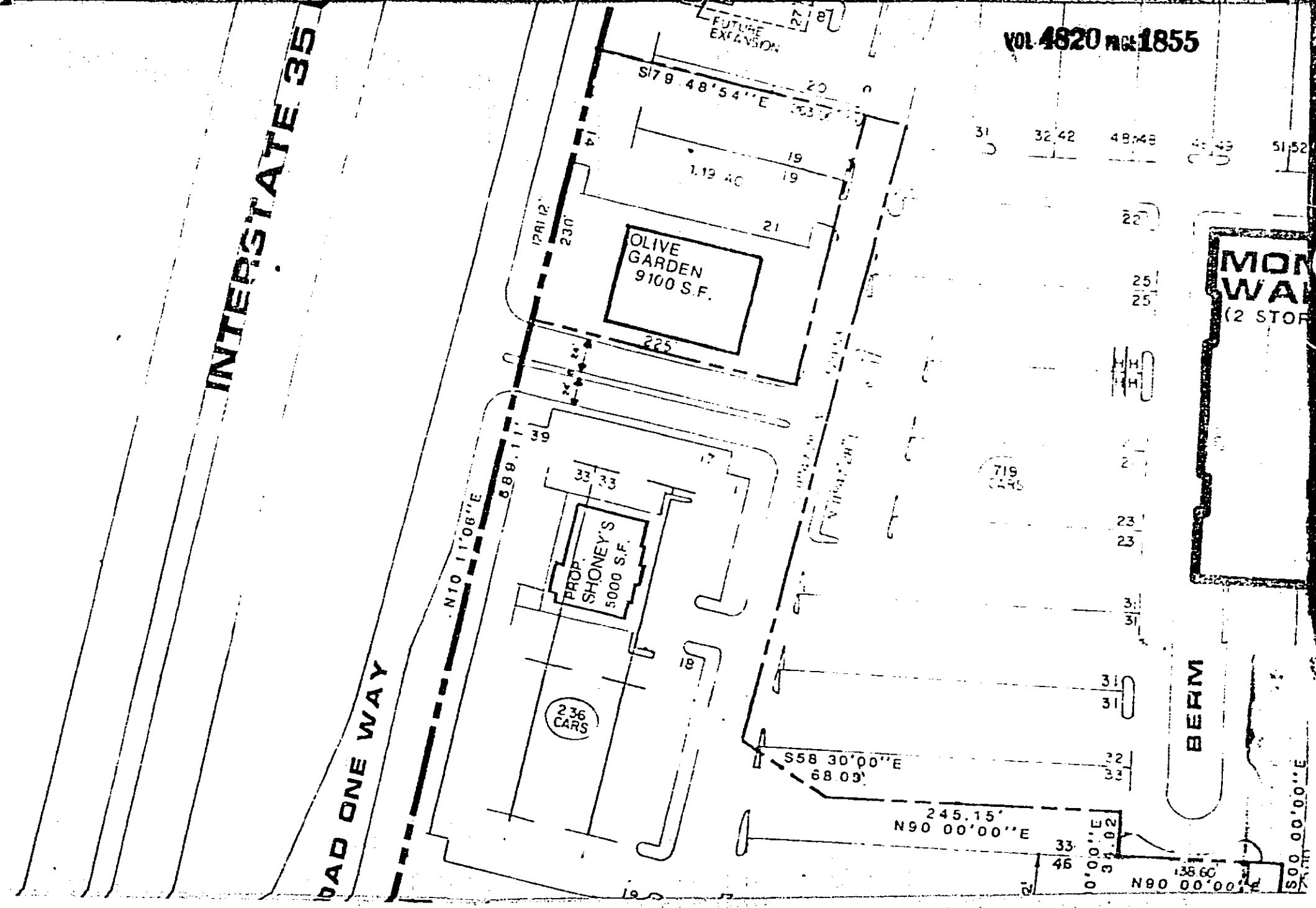
NOTES

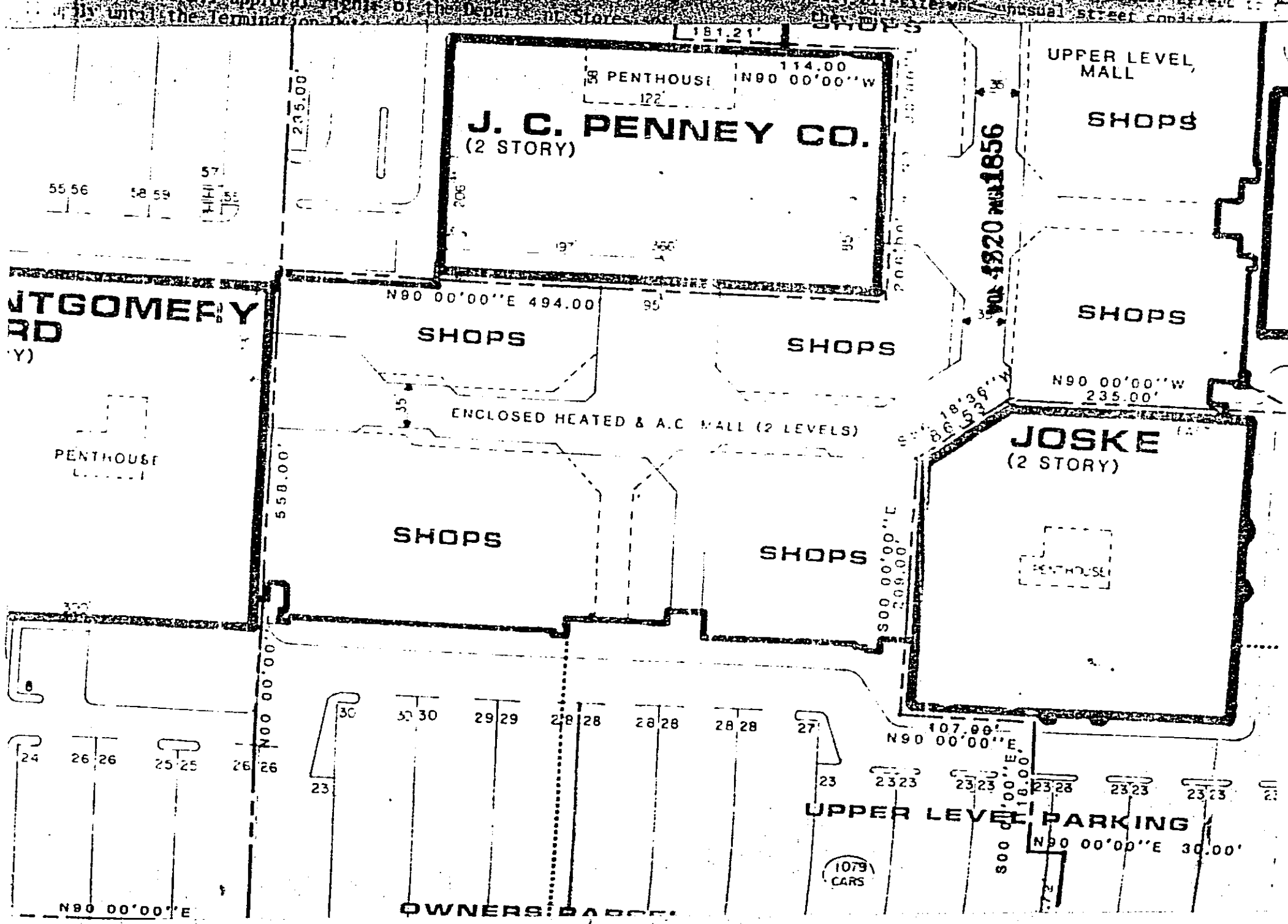


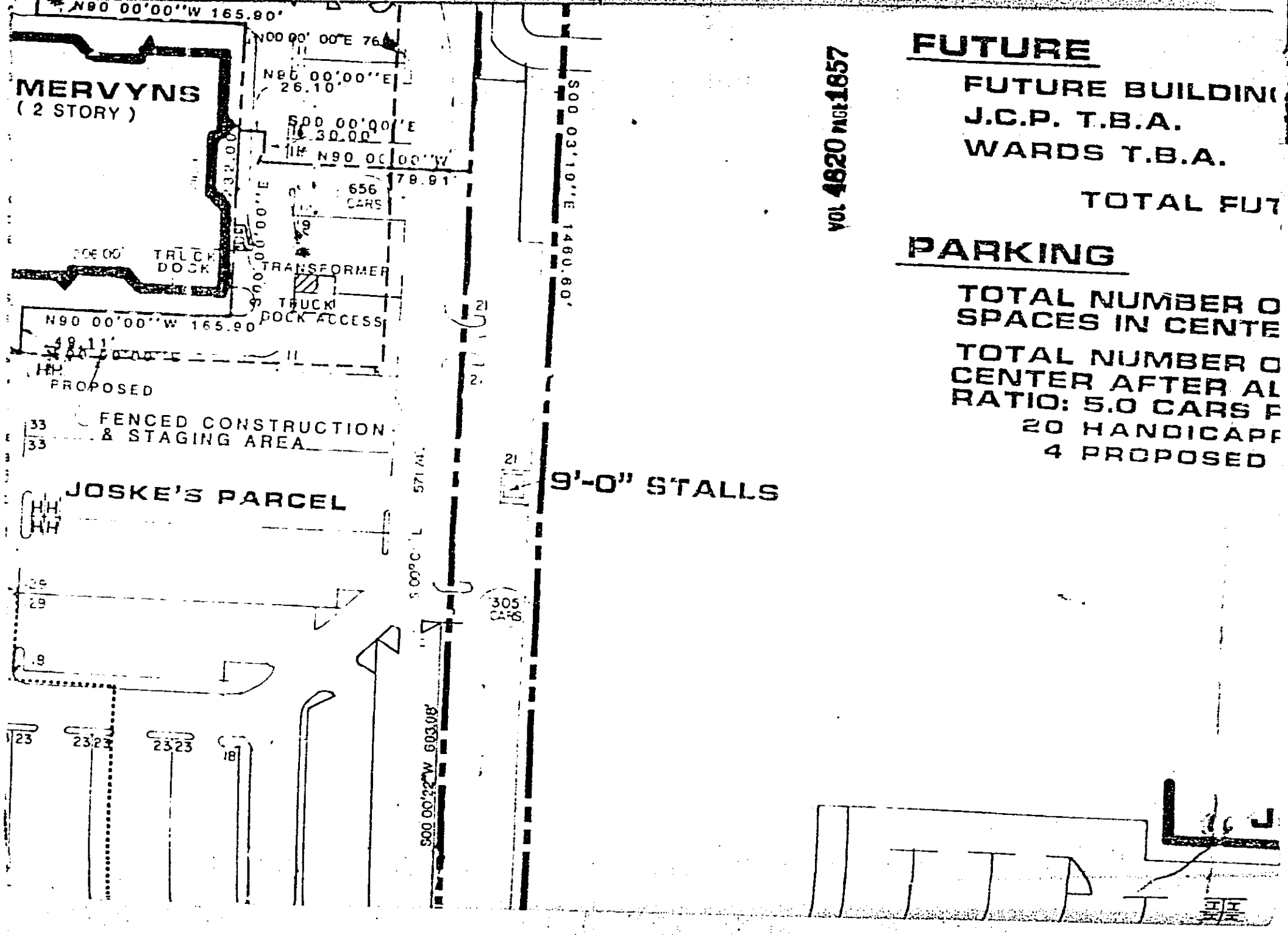
HANDICAP PARKING N.T.S.

90° PARKING LAYOUT N.T.S.

VOL 4820 PG 1854


INTERSTATE 35
ROAD ONE WAY
FUTURE EXPANSION
S17 9 48'54"E
1.19 AC
OLIVE GARDEN 9100 S.F.
PROP. SHONEY'S 5000 S.F.
236 CARS
N10 11'08"E
S58 30'00"E
68.09'
245.15'
N90 00'00"E
138.60'
N90 00'00"E
S00 00'00"E
BERM
MON
WA
(2 STOR


J. C. PENNEY CO.
(2 STORY)
PENTHOUSE
114.00
N90 00'00"W
181.21'
UPPER LEVEL MALL
SHOPS
SHOPS
SHOPS
N90 00'00"E 494.00
SHOPS
SHOPS
ENCLOSED HEATED & A.C MALL (2 LEVELS)
N90 00'00"W
235.00'
JOSKE
(2 STORY)
PENTHOUSE
SHOPS
SHOPS
PENTHOUSE
S00 00'00"E
209.00'
107.00'
N90 00'00"E
UPPER LEVEL PARKING
N90 00'00"E 30.00'
1079
CARS
N90 00'00"E
OWNERS PARKI
VOL 4320 PAGE 1856



VOL 4820 PAGE 1857

FUTURE

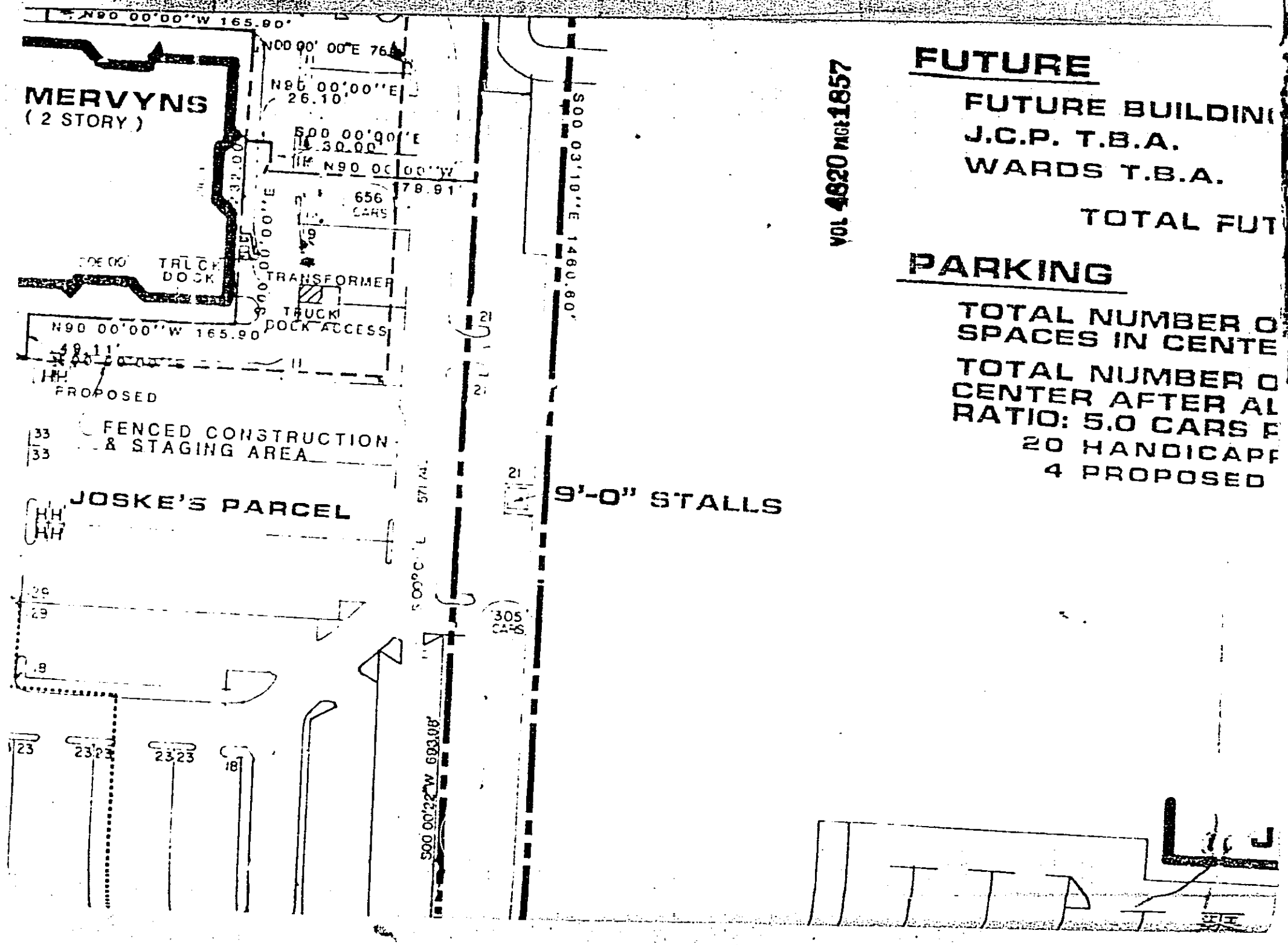
FUTURE BUILDIN(
J.C.P. T.B.A.
WARDS T.B.A.

TOTAL FUT

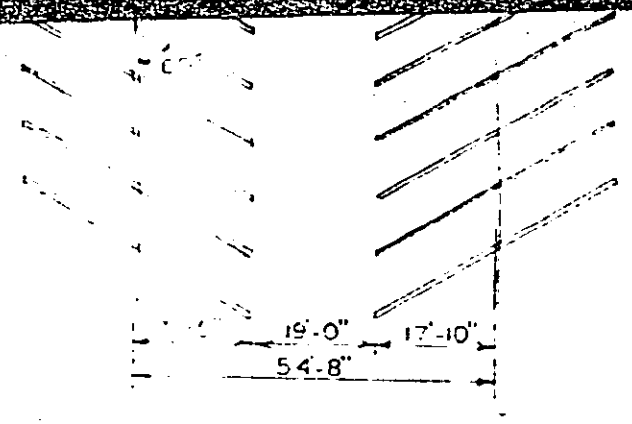
PARKING

TOTAL NUMBER O
SPACES IN CENTE

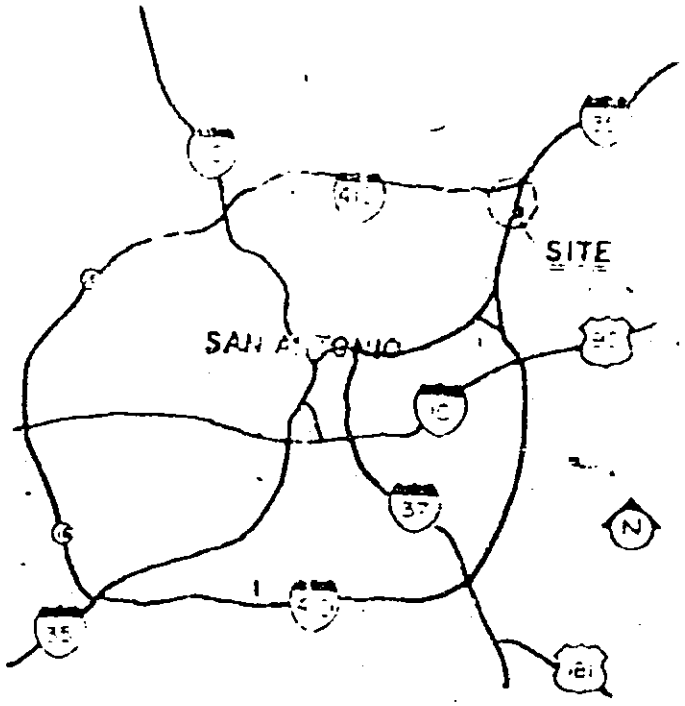
TOTAL NUMBER O
CENTER AFTER AL
RATIO: 5.0 CARS F
20 HANDICAPP
4 PROPOSED


N90 00'00"W 165.90'
N00 00' 00"E 76
N90 00'00"E
26.10'
S00 00'00"E
30.00
N90 00'00"W
78.91'
656
CARS
MERVYNS
(2 STORY)
TRUCK
DOCK
TRANSFORMER
TRUCK
DOCK ACCESS
N90 00'00"W 165.90
PROPOSED
FENCED CONSTRUCTION
& STAGING AREA
JOSKE'S PARCEL
S00 03'10"E 1480.80'
9'-0" STALLS
305
CARS
S00 00'22"W 693.08'
VOL 4820 PGS 1857
FUTURE
FUTURE BUILDIN
J.C.P. T.B.A.
WARDS T.B.A.
TOTAL FUT
PARKING
TOTAL NUMBER O
SPACES IN CENTE
TOTAL NUMBER O
CENTER AFTER AL
RATIO: 5.0 CARS P
20 HANDICAPP
4 PROPOSED

A. IN CENTER	1,122,825
3	10,000
	5,760
	4,258
URE G.L.A.	20,018
F PARKING R	5712
F SPACES IN L EXPANSIONS A PER/1000 S.F. G.L.A.	5708
ED SPACES	
HANDICAPPED SPACES	



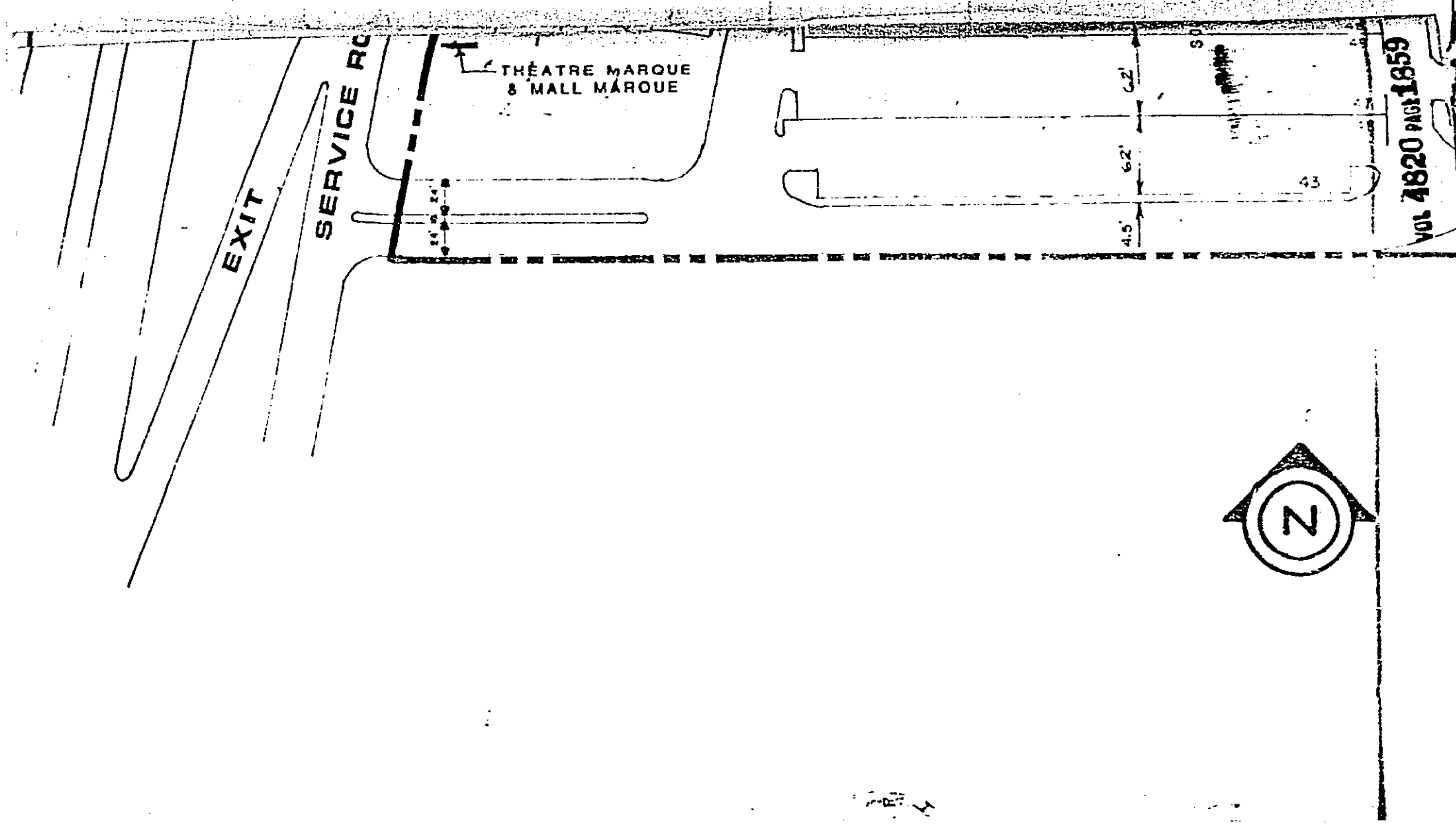
60° PARKING LAYOUT
N.T.S.



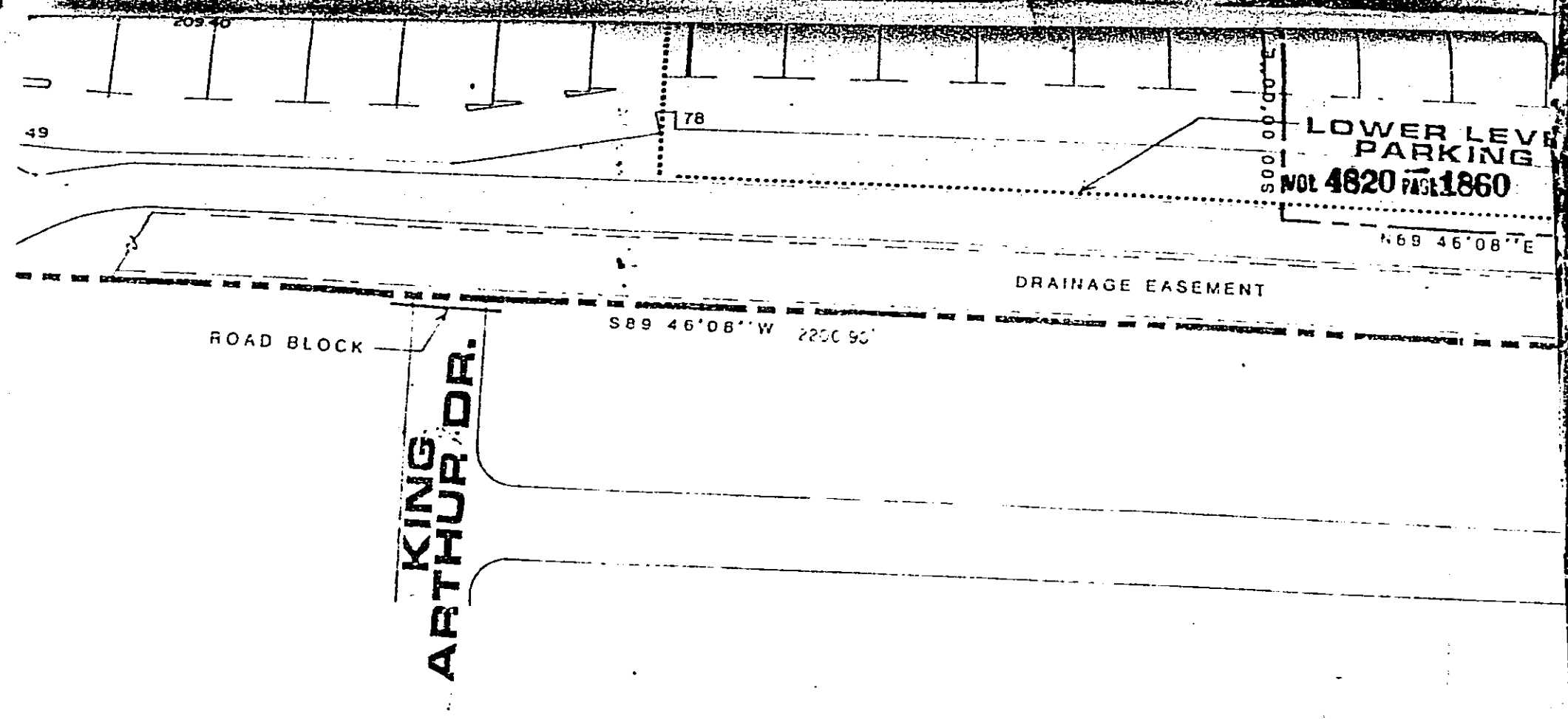
AREA MAP
N.T.S.

OSKE

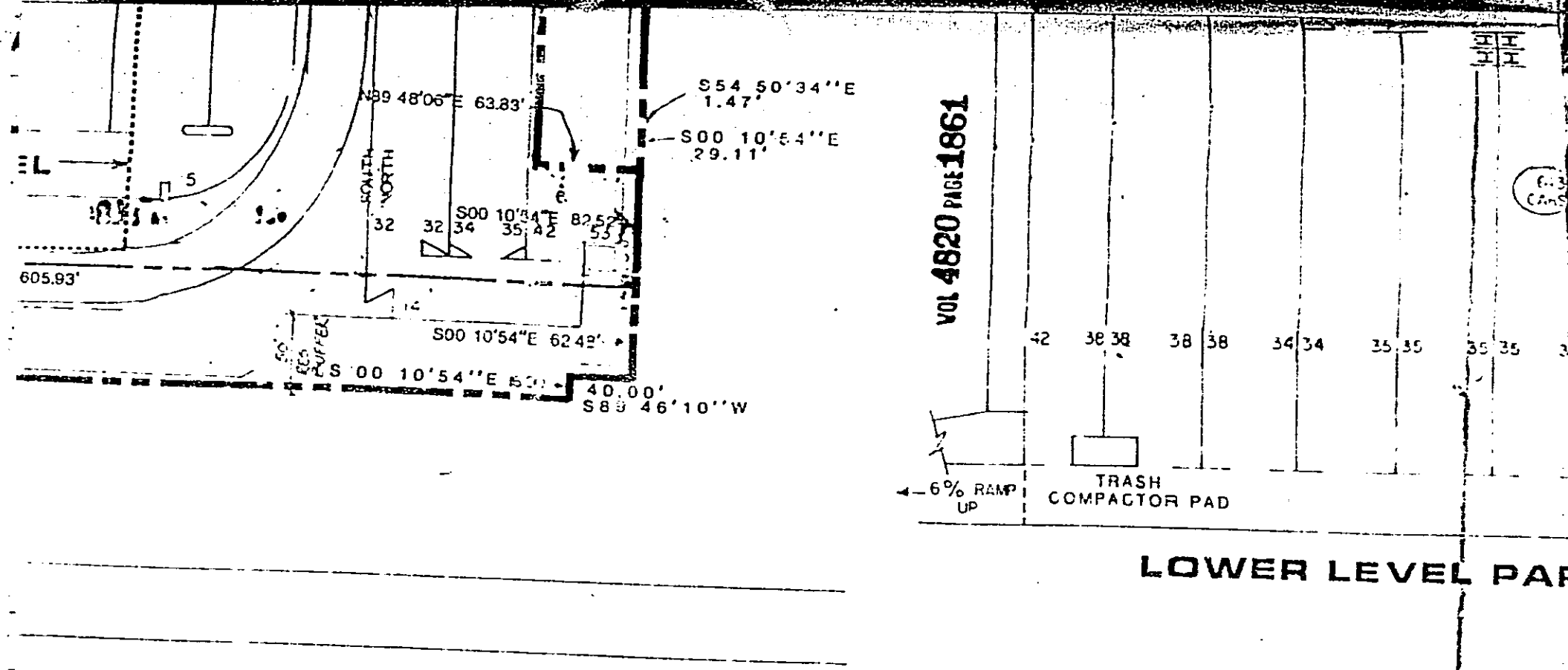
VOL. 4820 PAGE 1858

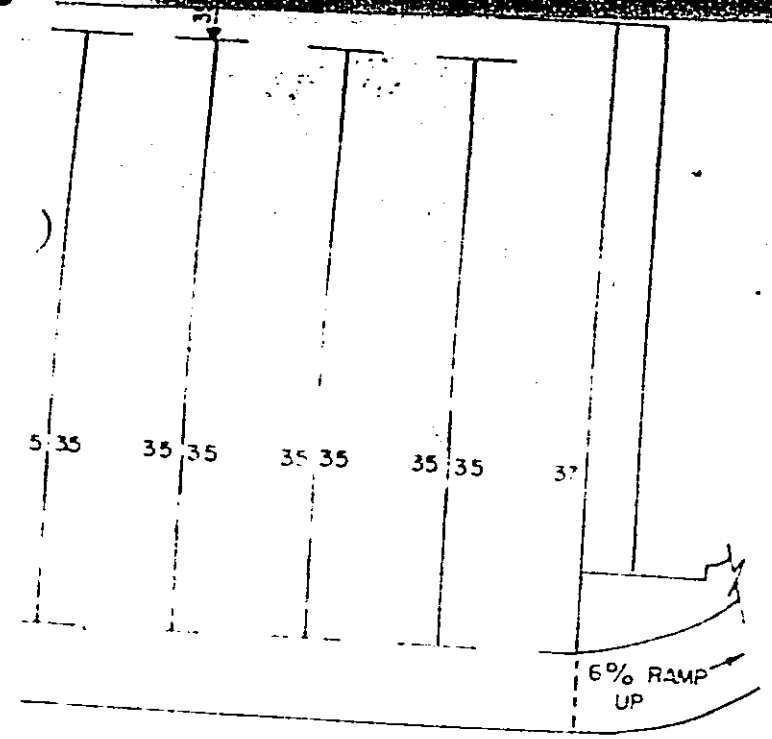


VOL 4820 PAGE 1859



VOL 4820 PAGE 1860


N89 48'06"E 63.83'
S54 50'34"E
1.47'
S00 10'54"E
29.11'
SOUTH
NORTH
S00 10'54"E 82.52'
605.93'
S00 10'54"E 62.42'
S 00 10'54"E
40.00'
S89 46'10"W
VOL 4820 PAGE 1861
6% RAMP
UP
TRASH
COMPACTOR PAD
LOWER LEVEL PAR



KING DETAIL

MELVIN SIMON & ASSOCIATES, INC.
MERCHANTS PLAZA, P.O. BOX 7033, INDIANAPOLIS, IN 46207

PROJECT

WINDSOR PARK MALL SHOPPING CENTER

LOCATION

SAN ANTONIO, TEXAS

DESCRIPTION

DATE	CODE	NUMBER	REVISIONS
5/25/83 SCALE: 1" = 100' BY: BRANDON	P	2	13

VOL 4820 PAGE 1862

VICKREY & ASSOCIATES, Inc.
CONSULTING ENGINEERS

LEGAL DESCRIPTION

for

JOSKES PARCEL

8.093 acres of land out of the Gertrude Rodriguez Survey No. 132, being out of Lots 26 and 27, NCB 12190 out of the Simon Subdivision as recorded in Volume 9506, Pages 204-206 in the Deed and Plat Records of Bexar County, Texas and out of a Quit Claimed portion of Mordred Drive as recorded in Volume 3352, Page 1902 and Page 1907 in the Deed and Plat Records of Bexar County, Texas, said 8.093 acres of land being more particularly described as follows, to wit:

Commencing: at an iron pin found on the south right-of-way line of FM 1976 (Walzem) Road for the northeast corner of Lot 28, NCB 12190 and the northwest corner of Lot 29, NCB 12190;

Thence: S 00° 00′ 00" W, 132.67 feet with the east line of said Lot 28 and the west line of said Lot 29 to a point;

Thence: N 90° 00′ 00" E, 149.94 feet with the north line of said Lot 28 and the south line of said Lot 29 to an iron pin found;

Thence: S 00° 00′ 22" W, 685.72 feet with the east line of said Lot 28 and the west line of a 1.03 acre tract formerly the west right-of-way line of Mordred Drive to a found nail with cap for the POINT OF BEGINNING;

Thence: S 90° 00′ 00" E, 27.5 feet to a point in the centerline of said Quit Claim of Mordred Drive to a found nail with cap;

Thence: S 00° 00′ 22" W, 693.98 feet with along the east line of the herein described tract and the centerline of said Quit Claimed Morded Drive to a cross found in concrete;

Thence: N 89° 48′ 06" E, 63.83 feet with the centerline of said Quit Claim portion of Mordred Drive to a found nail with cap on the centerline of Garwain Drive;

Thence: S 00° 10′ 54" E, 82.52 feet, the first 25.00 feet with the east line of the Mordred Drive Quit Claim, 57.52 feet of the east line of said Lot 27 to an iron pin found for the southeast corner of the herein described tract and the northeast corner of said Lot 26, NCB 12190;

Thence: S 89° 46′ 08" W, 605.93 feet with the south line of the herein described tract and the north line of said Lot 26 to an iron pin set for the southwest corner of the herein described tract;

EXHIBIT "J-1"

VOL 4820 PAGE 1863

Thence: with the westerly line of the herein described tract and the easterly line of said Lot 26 as follows:

N 00° 00′ 00" E, 228.72 feet to an iron pin set;

N 90° 00′ 00" W, 30.00 feet to an iron pin set;

N 00° 00′ 00" E, 118.00 feet to an exterior building corner;

N 90° 00′ 00" W, 107.00 feet to an exterior building corner;

N 00° 00′ 00" E, 209.00 feet to an interior building corner;

N 56° 18′ 36" E, 86.53 feet to an interior building corner;

Thence: with the northerly line of the herein described tract and the southerly line of said Lot 26 as follows:

N 90° 00′ 00" E, 235.00 feet to a found nail with cap;

S 00° 00′ 00" E, 61.39 feet to a found nail with cap;

N 90° 00′ 00" E, 344.39 feet to a found nail with cap in the east line of said Lot 27;

Thence: N 00° 00′ 22" E, 236.39 feet with the east line of said Lot 27 to the POINT OF BEGINNING, containing 8.093 acres of land, more or less.

Job No. 0793-05-24-77
CD/RK/SH/lr/mb#4.32
July 22, 1983
REVISED: March 8, 1984
REVISED: June 7, 1989
REVISED: April 16, 1990

VOL 4 8 2 0 PAGE 1 8 6 4

FILED IN MY OFFICE
ROBERT D. GREEN
COUNTY CLERK BEXAR CO.

1990 MAY 17 AM 11: 13

Any provision herein which restricts the sale, rental or use of the described REAL PROPERTY because of race, color, religion, sex, handicap, familial status, or national origin is invalid and unenforceable under FEDERAL LAW.
THE STATE OF TEXAS COUNTY OF BEXAR
I hereby certify that this instrument was filed for rec. and was duly RECORDED, in the Official Public Records of Real Property of Bexar County, Texas on

MAY 18 1990

COUNTY CLERK BEXAR COUNTY, TEXAS

2040877

FOURTH AMENDMENT OF
EASEMENT AND OPERATING AGREEMENT

THIS Fourth Amendment of Easement and Operating Agreement ("Agreement"), made and entered into as of this 20th day of November, 1990 by and among WINDSOR PARK DEVELOPMENT COMPANY LIMITED PARTNERSHIP, a Texas limited partnership ("Developer"), J.C. PENNEY PROPERTIES, INC., a Delaware corporation qualified to do business in the State of Texas ("Penney"), MONTGOMERY WARD DEVELOPMENT CORPORATION, a Delaware corporation qualified to do business in the State of Texas ("Ward"), CONSTRUCTION DEVELOPERS, INCORPORATED, an Arkansas corporation qualified to do business in the State of Texas ("Condev"), DILLARD DEPARTMENT STORES, INC., a Delaware corporation qualified to do business in the State of Texas ("DDSI"), JOSKE'S SAN ANTONIO REAL ESTATE COMPANY, a Delaware corporation qualified to do business in the State of Texas ("JSAREC") (Condev, DDSI and JSAREC being hereinafter collectively referred to as "Dillard") (Developer, Penney, Ward, Condev, DDSI and JSAREC being hereinafter collectively referred to as the "parties").

W I T N E S S E T H:

WHEREAS, certain of the parties entered into that certain Easement and Operating Agreement, dated September 10, 1974, and recorded October 1, 1974 in Volume 7451, Page 649, in the Deed Records of Bexar County, Texas; and

WHEREAS, certain of the parties amended said Easement and Operating Agreement by that certain Modification of Easement and Operating Agreement dated as of May 5, 1975, and recorded October 30, 1975 in Volume 7693, Page 199, of the Deed Records of Bexar County, Texas; and

WHEREAS, certain of the parties further amended said Easement and Operating Agreement by that certain Second Amendment of Easement and Operating Agreement dated as of April 15, 1977 and recorded April 28, 1977 in Volume 8069, Page 704 in the Deed Records of Bexar County, Texas; and

WHEREAS, certain of the parties further amended said Easement and Operating Agreement by that certain Third Amendment of Easement and Operating Agreement dated as of July 16, 1985 and recorded May 17, 1990, in Volume 4820, Page 1829, in the Deed Records of Bexar County, Texas (said Easement and Operating Agreement, as amended, hereinafter collectively referred to as the "Operating Agreement"); and

WHEREAS, Developer desires and has commenced construction of certain renovations and improvements at Windsor Park Mall as more particularly shown on Exhibit "R" attached hereto and made a part hereof by reference; and

WHEREAS, Windsor Food Court Associates ("WFCA") has leased the second floor of the Joske Main Store Building (as defined in the Operating Agreement) (and shown on Exhibit "R" attached hereto) from JSAREC (the "Food Court Parcel") for the construction and operation thereon of a food court ("food court") in the Shopping Center at the location more particularly described in Exhibit "S" attached hereto and made a part hereof by reference; and

WHEREAS, the parties desire to amend the Operating Agreement to allow JSAREC to lease the Food Court Parcel to WFCA and to recognize and permit the operation of the food court as an alternative use for the second floor of the Joske Main Store Building; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements of the parties herein set forth, it is hereby agreed by and among the parties as follows:

070390
sharfile/simon/S0070Amd.FAE

Ret: Service Title

2 -13-91 0571770 0800319 $17.00 Y 01 097

1. The parties do hereby acknowledge and consent to the renovation and improvement of the Shopping Center as shown on Exhibit "R" attached hereto and made a part hereof by reference, including without limitation, the construction and the operation by WFCA of a food court on the Food Court Parcel (as shown on Exhibit "R" attached hereto) in the Joske Main Store Building at the location described in Exhibit "S" attached hereto and made a part hereof by reference.

2. Pursuant to Section 14.4 of the Operating Agreement, the parties hereby consent to the construction and operation of the kiosks as shown on Exhibit "R" attached hereto and made a part hereof by reference.

3. Unless otherwise herein stated, all capitalized terms in this Agreement shall have the same meaning and definitions as in the Operating Agreement.

4. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.

5. Except as herein modified and amended, all of the terms, covenants and conditions of the Operating Agreement shall remain in full force and effect and are hereby ratified and confirmed.

6. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original document, and when taken together shall form but one instrument.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written.

WINDSOR PARK DEVELOPMENT COMPANY LIMITED PARTNERSHIP, a Texas limited partnership

By: _____
Herbert Simon, General Partner

ORIGINAL DIM

STATE OF INDIANA)
)SS:
COUNTY OF MARION)

This instrument was acknowledged before me on this 24th day of September, 1990 by Herbert Simon, a General Partner of WINDSOR PARK DEVELOPMENT COMPANY LIMITED PARTNERSHIP, a Texas limited partnership, for and on behalf of said partnership.

NOTARY PUBLIC STATE OF INDIANA
JUDY STATOM Notary Public
County of Residence: Marion
Expiration Date: 10-15-92

Judy Statom
Notary Public

My Commission Expires:

_____

My County of Residence:

_____

091990/andy/S0070Amd.FAE

VOL 5004 PAGE 0586

Attest:

J. C. PENNEY PROPERTIES, INC.,
a Delaware corporation

By: Raymond J. Emma

APPROVED
ATTORNEY

ORIGINAL DIM

STATE OF TEXAS)
)ss.:
COUNTY OF DALLAS)

This instrument was acknowledged before me on the 12th day of July, 1990, by ~~Michael Lowenkron~~ RAYMOND J. EMMA, Vice President of J.C. PENNEY PROPERTIES, INC., a Delaware corporation, on behalf of said corporation.

CAROLYN L. RODRIGUES
MY COMMISSION EXPIRES
April 14, 1993

Notary Public, State of Texas

VOL 5004 PAGE 0587

MONTGOMERY WARD DEVELOPMENT CORPORATION, a Delaware corporation

By: _____

Attest:

_____

STATE OF ILLINOIS)
)SS:
COUNTY OF COOK)

This instrument was acknowledged before me on this 21st day of June, 1990 by Carol J. Harms and G. T. Morgan, the Senior Vice President and Assistant Treasurer and Secretary, respectively, of MONTGOMERY WARD DEVELOPMENT CORPORATION, a Delaware corporation, on behalf of said corporation.

Frances M. Catledge
Notary Public

My Commission Expires:

10/25/1991

My County of Residence:

Cook

ORIGINAL DIM

"OFFICIAL SEAL"
FRANCES M. CATLEDGE
Notary Public, State of Illinois
My Commission Expires 10/25/91

VOL 5004 PAGE 0588

CONSTRUCTION DEVELOPERS INCORPORATED, an Arkansas corporation

By: John Hawkins

Attest:

DILLARD DEPARTMENT STORES, INC., a Delaware corporation

By: John Hawkins

Attest:

STATE OF ARKANSAS)
)SS:
COUNTY OF PULASKI)

This instrument was acknowledged before me on this 20th day of November, 1990 by John Hawkins and James E. Darr, Jr., the Vice President and Secretary, respectively, of CONSTRUCTION DEVELOPERS, INCORPORATED, an Arkansas corporation, on behalf of said corporation.

Janea Hardrick
Notary Public

ORIGINAL DIM

My Commission Expires:
8/24/93

My County of Residence:
Pulaski

STATE OF ARKANSAS)
)SS:
COUNTY OF PULASKI)

This instrument was acknowledged before me on this 20th day of November, 1990 by John Hawkins and James E. Darr Jr., the Vice President and Secretary, respectively, of DILLARD DEPARTMENT STORES, INC., a Delaware corporation, on behalf of said corporation.

Janea Hardrick
Notary Public

My Commission Expires:
09/24/93

My County of Residence:
Pulaski

VOL 5004 PAGE 0589

JOSKE'S SAN ANTONIO REAL ESTATE COMPANY, a Delaware corporation

By: John Hawkins

Attest:

STATE OF ARKANSAS)
)SS:
COUNTY OF PULASKI)

This instrument was acknowledged before me on this 20th day of November, 1990 by John Hawkins and James E. Darr, Jr., the Vice President and Secretary, respectively, of JOSKE'S SAN ANTONIO REAL ESTATE COMPANY, a Delaware corporation, on behalf of said corporation.

Notary Public

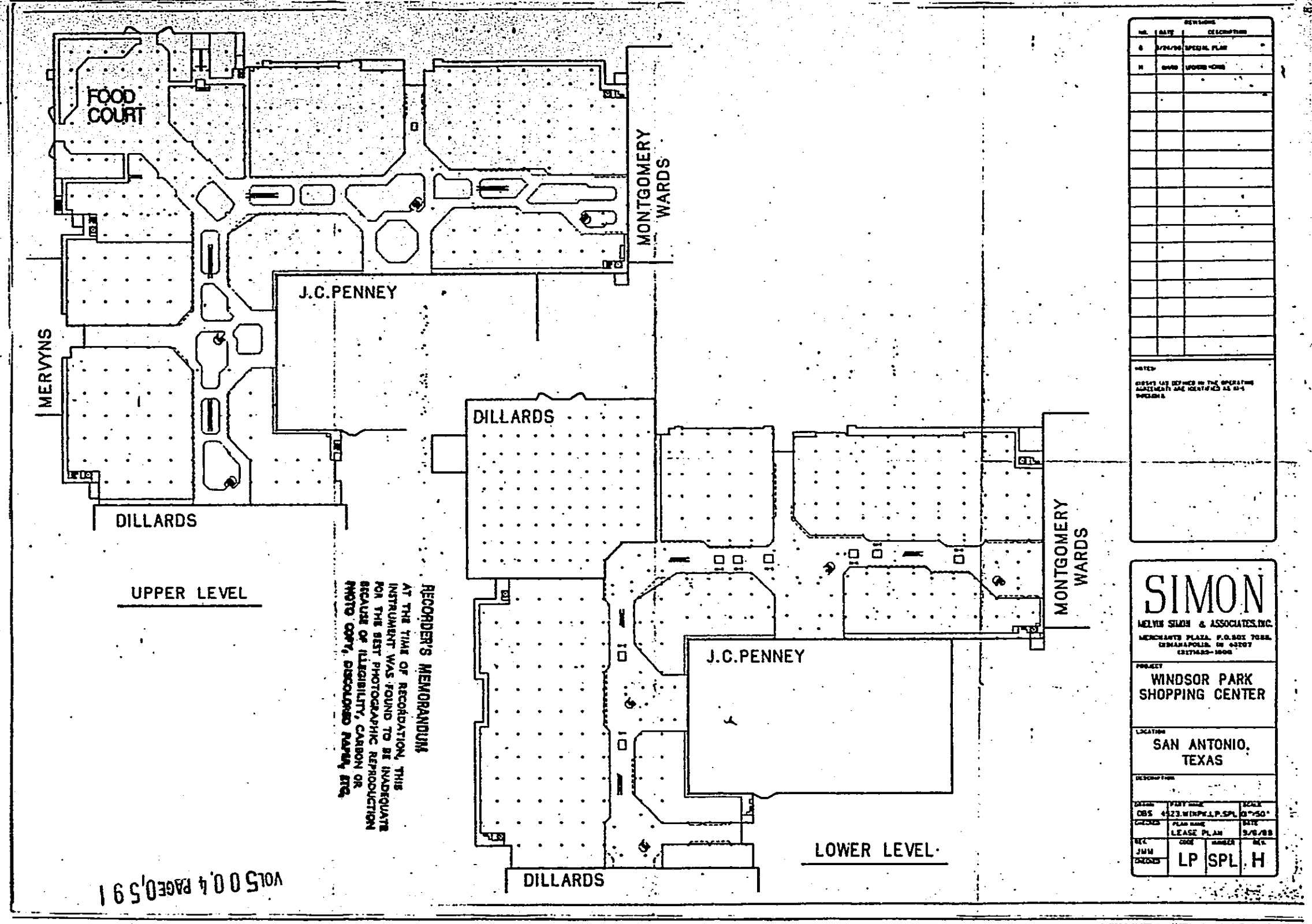
My Commission Expires:
9/24/93

My County of Residence:
Pulaski

ORIGINAL DIM

VOL 5004 PAGE 0590

EXHIBIT R



RECORDER'S MEMORANDUM
AT THE TIME OF RECORDATION, THIS INSTRUMENT WAS FOUND TO BE INADEQUATE FOR THE BEST PHOTOGRAPHIC REPRODUCTION BECAUSE OF ILLEGIBILITY, CARBON OR PHOTO COPY, DISCOLORED PAPER, ETC.

1.409 acres (61,364 square feet) of floor space being located on the second floor level of the Windsor Park Mall and being out of Lot 27, NCB 12190 Simon Subdivision, San Antonio, Texas, as described by Plat recorded in Volume 9506, Pages 204-206 of the Deed and Plat Records of Bexar County, Texas and being more particularly described as follows:

Beginning: at a point in the northwest line of Lot 27 said point being N 56° 18′ 36" E, 0.96 feet from the most northwesterly corner of Lot 27, said point also being located on the second floor level of the Windsor Park Mall.

Thence: N 56° 18′ 36" E, 83.59 feet along the northwest line of Lot 27 to an interior building corner;

Thence: N 90° 00′ 00" E, 193.95 feet along an interior wall line that is 1.20 feet south of and parallel to a north line of Lot 27 to an interior building corner;

Thence: S 00° 00′ 00" E, 239.00 feet along an interior wall line to an interior building corner;

Thence: N 90° 00′ 00" W, 263.50 feet along an interior wall line to an interior building corner;

Thence: N 00° 00′ 00" E, 192.63 feet along an interior wall line that is 0.80 feet east of and parallel to a west line of Lot 27 to the POINT OF BEGINNING containing 1.409 acres (61,364 square feet) of floor space, more or less.

EXHIBIT "S"

VOL 5004 PAGE 0592

FILED IN MY OFFICE
ROBERT D. GREEN
COUNTY CLERK BEXAR CO.

1991 FEB 13 A 11:08

Any provision herein which restricts the sale, rental or use of the described real property because of color or race is invalid and unenforceable under Federal Law.

STATE OF TEXAS
COUNTY OF BEXAR

I hereby certify that this instrument was FILED in the Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED in the Official Public Records of Real Property of Bexar County, Texas on the date and at the time stamped hereon.

FEB 13 1991

COUNTY CLERK BEXAR COUNTY, TEXAS

Oct 1, 1974 168277 LS-I 140.00

EASEMENT AND OPERATING AGREEMENT

496504

among

WINDSOR PARK DEVELOPMENT COMPANY, and
J. C. PENNEY PROPERTIES, INC., and
MONTGOMERY WARD DEVELOPMENT CORPORATION, and
DILLARD DEPARTMENT STORES, INC., and
CONSTRUCTION DEVELOPERS, INCORPORATED, and
ALSTORES REALTY CORPORATION, and
ALLIED STORES OF TEXAS, INC.

Dated: Sept 10, 1974

Premises: Windsor Park Mall Shopping Center, San Antonio, Texas.

TABLE OF CONTENTS

Section		Page
1 -	EXHIBITS	3
2A -	SUPPLEMENTAL AGREEMENTS	3
2B -	NAME OF SHOPPING CENTER	4
2D -	RESERVED AREA	4
2E -	LANDSCAPED AREAS	4
2F -	PROPERTIES IN THE VICINITY OF ENTIRE PREMISES	5
3 -	PLANS FOR CONSTRUCTION	5
4 -	GRADING WORK	8
4A -	COMMENCEMENT OF WORK	8
5 -	OFF-SITE IMPROVEMENTS	8
6 -	ON-SITE IMPROVEMENTS	11
7 -	FLOOR AREA	13
8 -	DEVELOPER FACILITIES	14
9 -	DEPARTMENT STORE FACILITIES	17
10 -	OTHER TENANCIES AND OCCUPANCIES	20
11 -	SHOPPING CENTER OPENING DATE	21
11A -	WORK PROGRESS SCHEDULES	21
12 -	UNAVOIDABLE DELAYS	22
13 -	REMEDIES OF DEPARTMENT STORES PRIOR TO OPENING DATE	22
13A -	REMEDIES OF DEVELOPER AND OTHER DEPARTMENT STORES PRIOR TO OPENING DATE AS TO A DEFAULTING DEPARTMENT STORE	25
14 -	OPERATING COVENANTS OF DEVELOPER	27
15 -	OPERATING COVENANTS OF DEPARTMENT STORES	28
16 -	PARKING RATIO	30
17 -	TEMPORARY CESSATION OF BUSINESS	31
18 -	SIGN CRITERIA	31
19 -	COMMON FACILITIES AND RECIPROCAL EASEMENTS	31
20 -	ATTACHMENT OF AIR CONDITIONED MALL TO DEPARTMENT STORE STORE BUILDINGS	32
21 -	EMPLOYEE PARKING	33
22 -	UTILITY EASEMENTS	33
23 -	MAINTENANCE AND LIGHTING	34
24 -	MERCHANTS' ASSOCIATION	36
25 -	AIR CONDITIONED MALL EXPENSES	37
26 -	COMMON FACILITIES EXPENSES	37
27 -	EMINENT DOMAIN	37
28 -	INSURANCE	39
29 -	DAMAGE OR DESTRUCTION	41
30 -	TERM OF THIS AGREEMENT	41
31 -	AGREEMENT CONDITIONAL	42
32 -	MECHANIC'S LIENS	43
33 -	TAXES AND OTHER CHARGES	43
34 -	UNPERFORMED COVENANTS OF DEVELOPER	44

VOL 7451 PAGE 649

TABLE OF CONTENTS
(Continued)

VOL 7451 PAGE 650

Section			Page
35	-	ORDINANCES	46
36	-	ESTOPPEL CERTIFICATES	46
37	-	ALTERATIONS AND ADDITIONS	46
38	-	ARBITRATION	47
39	-	NO TERMINATION OF AGREEMENT	48
40	-	COVENANTS RUNNING WITH THE LAND	48
41	-	INDEPENDENT CONTRACTORS	49
42	-	WAIVERS	49
43	-	REMEDIES CUMULATIVE	49
44	-	MODIFICATIONS	49
45	-	APPLICABLE LAW	49
46	-	PARTIAL INVALIDITY	50
47	-	NOTICES	50
48	-	SUCCESSORS AND ASSIGNS	51
49	-	ASSIGNMENT, TRANSFER AND MORTGAGES	51
50	-	SECTION HEADINGS	52
51	-	GENDER	52
52	-	JOINT AND SEVERAL LIABILITY OF DDSI AND CONDEV	52
53	-	EXCULPATION OF DEVELOPER	53

EXHIBITS "A", "B", "C", "D", "E", "F", "G", "H" and "J"

INDEX OF DEFINED TERMS

Term	Page on Which Defined
Agreement	2
Air Conditioned Mall	15
Allied	1
Buy Back Price	25
Common Facilities	31
Condev	1
DDSI	1
Department Store(s)	1
Design Plan	7
Developer	1
Developer Facilities	14
Developer Parking Area	16
Developer Site	1
Dillard	1
Dillard Facilities	19
Dillard Parking Area	19
Dillard Main Store Building	19
Dillard Site	1
Entire Premises	1
Excess Assessment	11
Floor Area	13
Grading Work	9
Impositions	43
Independent Engineer	5
Initial Off-Site Improvements	10
Joske	1
Joske Facilities	19
Joske Main Store Building	19
Joske Parking Area	19
Joske Site	2
Mall Store Buildings	14
Merchants' Association	36
Off-Site Improvements	9
On-Site Improvements	11
Opening Date	21
Penney	1
Penney Additional Building	17
Penney Facilities	17
Penney Parking Area	17
Penney Main Store Building	17
Penney Site	1
Permissible Building Lines	2
Plot Plan	2
Project Architect	5
Project Engineer	5
Reserved Area	2
Shopping Center	2
Shopping Center Site	2
Supplemental Agreements	3
Unavoidable Delays	21
Ward	1
Ward Additional Building	18
Ward Facilities	18
Ward Parking Area	18
Ward Main Store Building	18
Ward Site	1

VOL 7451 PAGE 651

EASEMENT AND OPERATING AGREEMENT

THIS AGREEMENT, made as of the 10th day of September, 1974, among WINDSOR PARK DEVELOPMENT COMPANY, a Texas Limited Partnership, of 1712 North Meridian Street, Indianapolis, Indiana 46202 ("Developer"), and J. C. PENNEY PROPERTIES, INC., a Delaware corporation qualified to do business in the State of Texas, having its principal office at 1301 Avenue of the Americas, New York, New York 10019 ("Penney"), and MONTGOMERY WARD DEVELOPMENT CORPORATION, a Delaware corporation qualified to do business in the State of Texas, having its principal office at 535 West Chicago Avenue, Chicago, Illinois 60607 ("Ward"), and CONSTRUCTION DEVELOPERS, INCORPORATED, an Arkansas corporation qualified to do business in the State of Texas, having its principal office at 900 West Capitol Avenue, Little Rock, Arkansas 72203 ("Condev"), and DILLARD DEPARTMENT STORES, INC., a Delaware corporation qualified to do business in the State of Texas, having its principal office at 900 West Capital Avenue, Little Rock, Arkansas 72203 ("DDSI") (Condev and DDSI being hereinafter collectively referred to as "Dillard"), and ALSTORES REALTY CORPORATION, a Delaware corporation qualified to do business in the State of Texas, having its principal office at 1114 Avenue of the Americas, New York, New York 10036 ("Alstores"), and ALLIED STORES OF TEXAS, INC., a Texas corporation, having its principal office at Alamo Square, San Antonio, Texas 78205 ("Joske") (Alstores and Joske being hereinafter collectively referred to as "Allied"), (Penney, Ward, Dillard and Allied being hereinafter collectively referred to as the "Department Stores" or, individually, as a "Department Store").

VOL 7451 PAGE 652

W I T N E S S E T H:

WHEREAS, Developer, Penney, Ward, DDSI and Alstores each own in fee a portion of a certain parcel of land containing 73.28 acres, situated in the County of Bexar and State of Texas, shown on the survey annexed hereto as Exhibit "A" and described in Exhibit "B" annexed hereto ("Entire Premises"); and

WHEREAS, that portion of the Entire Premises owned by Penney containing 12.49 acres is shown on Exhibit "A" and described in Exhibit "C" annexed hereto ("Penney Site"); and

WHEREAS, that portion of the Entire Premises owned by Ward containing 14.18 acres is shown on Exhibit "A" and described in Exhibit "D" annexed hereto ("Ward Site"); and

WHEREAS, that portion of the Entire Premises containing 12.40 acres as shown on Exhibit "A" and described in Exhibit "E" annexed hereto ("Dillard Site") has been acquired by DDSI, hereafter, to be conveyed to Condev and from Condev to be leased to DDSI (By Condev, or as a part of a sale-leasehold financing of the Dillard Site) for a term extending beyond the term of this Agreement; and

WHEREAS, that portion of the Entire Premises owned by Developer containing 24.21 acres is shown on Exhibit "A" and described in Exhibit "F" annexed hereto ("Developer Site") and will be improved by Developer as hereinafter provided; and

WHEREAS, that portion of the Entire Premises owned by Alstores containing not more than 9.50 acres is shown on Exhibit "A" and described in Exhibit "J" annexed hereto ("Joske Site"); and

WHEREAS, it is the mutual desire of the parties hereto that Developer shall develop an integrated and unified shopping center on the Developer Site and the Department Stores shall construct retail stores and facilities related thereto upon their respective Sites and that the Entire Premises shall be developed in accordance with the plot plan annexed hereto as Exhibit "G" ("Plot Plan") showing the Penney Site, the Ward Site, the Dillard Site, the Joske Site, the Developer Site (collectively "Shopping Center Site"), and the proposed buildings, improvements, parking facilities (including a sample showing the minimum parking standard for the Entire Premises), roadways, entrances, exits (including, without limitation, curb cuts), landscaped areas and other improvements to be constructed thereon initially and the areas reserved for future construction of buildings and improvements and that, thereafter, the Developer, Penney, Ward, Dillard and Joske Sites shall be jointly operated as a regional shopping center ("Shopping Center"); and

WHEREAS, at the request of the Developer, the parties hereto agree that for the optimum development of the Shopping Center as a unified and coordinated retail sales area, it is necessary that they enter into an Operating Agreement ("Agreement") covering certain matters (including, but not limited to, matters relating to the construction and maintenance of facilities on, and the use and restrictions on, the use of their respective Sites); and

WHEREAS, certain parcels of land situated on the Developer Site and so shown on Exhibit "G" may not be developed by Developer as part of the Shopping Center but, instead, may be reserved for future development ("Reserved Area"); and

WHEREAS, the lines within which the buildings on the Entire Premises must be substantially confined, except as set forth in Section 9.8 hereof, are hereinafter referred to as "Permissible Building Lines"; and

WHEREAS, Developer represents and warrants to the Department Stores that it has full right and lawful authority to enter into this Agreement and to perform all of Developer's obligations as hereinafter set forth for the full term hereof; and

WHEREAS, Developer represents and warrants to the Department Stores that there is available as of the date hereof and that there will be available upon completion by each of the Department Stores of the footings and underground supports for their respective "Main Store Buildings" a sufficient supply of energy to fully and completely satisfy the needs and requirements of the Shopping Center as contemplated by this Agreement; and

WHEREAS, Developer represents and warrants to the Department Stores that the proposed Shopping Center and the mercantile purposes intended, all as contemplated by this Agreement, is, as of the date hereof, and will, upon completion by each of the Department Stores of the footings and underground supports

VOL 7451 PAGE 653

for their respective "Main Store Buildings", comply with all ecological and Environmental Protection Agency requirements of all Federal, State, County and Municipal bodies,

NOW, THEREFORE, in consideration of the foregoing, the mutual agreements herein contained and other good and valuable consideration to each of the parties hereto paid by the other, the receipt and sufficiency whereof is acknowledged, it is hereby mutually covenanted and agreed as follows:

VOL 7451 PAGE 654

Section 1 - Exhibits.

Attached hereto and forming a part of this Agreement are the following Exhibits which, for the purpose of identification, have been signed or initialed by the parties hereto or their attorneys:

Exhibit "A" - Survey of the Entire Premises showing the Penney Site, the Ward Site, the Dillard Site, the Joske Site, the Developer Site and the Reserved Area.

Exhibit "B" - Legal description of the Entire Premises.

Exhibit "C" - Legal description of the Penney Site.

Exhibit "D" - Legal description of the Ward Site.

Exhibit "E" - Legal description of the Dillard Site.

Exhibit "F" - Legal description of the Developer Site.

Exhibit "G" - Plot Plan.

Exhibit "H" - Sign Criteria for the Entire Premises.

Exhibit "I" - Legal description of the Joske Site.

Section 2A - Supplemental Agreements.

Simultaneously herewith, Developer has executed separate agreements with each Department Store ("Supplemental Agreement(s)"), setting forth certain understandings and agreements between Developer and each Department Store not set forth herein, containing, among others, specifications of such Department Stores' share of and method of allocation of various expenses of the Shopping Center construction and maintenance. It is understood that the provisions of the Supplemental Agreements insofar as the Department Stores' contributions to Air Conditioned Mall Expense and to Common Facilities Expenses shall (subject to the provisions of the Supplemental Agreements) remain in effect for and during the periods referred to in Sections 25 and 26 of this Agreement, respectively.

Section 2B - Name of Shopping Center.

The name of the Shopping Center shall be Windsor Park Mall Shopping Center, and such name shall not be changed by Developer during the term of this Agreement without the written consent of all Department Stores having first been obtained.

(NEXT SECTION 2D)

Section 2D - Reserved Area.

Developer hereby covenants and agrees with respect to the Reserved Area that during the term of this Agreement the Reserved Area may be developed and used individually and/or collectively for any lawful purpose but with the following limitations:

(i) No buildings or other improvements will be constructed within thirty (30') feet of the boundaries of the Reserved Area;

(ii) No free standing signs which could or would by reason of location or size unduly restrict visibility of any portion of the Shopping Center will be erected;

(iii) The Parking Area on each of the respective parcels of land comprising the Reserved Area shall contain not less than 5.0 car spaces of the character shown on the Plot Plan for each 1,000 square feet of Floor Area" (as hereinafter defined) on each of the said respective parcels unless parking ratios for such usages published by the Urban Land Institute require higher ratios;

(iv) The height and architectural design (for visibility and compatibility) of all buildings on the Reserved Area are subject to the approval of the Department Stores, which approval shall not be unreasonably withheld; and

(v) The Reserved Area shall not be used for a purpose which may cause odors and/or untidiness such as (but not limited to) stand-up or drive-in food facilities or other litter-creating operations; provided, however, that a sit-down type restaurant is not precluded hereby.

Section 2E - Landscaped Areas.

It is understood and agreed that those portions of the Entire Premises shown as "Landscaped Area" on the Plot Plan shall be landscaped and shall not be utilized for any other purpose or purposes (including, without limitation, parking, access, roadways, etc.) whatsoever.

VOL 7451 PAGE 655

Section 2F - Properties in the Vicinity of Entire Premises.

Developer covenants and agrees that to the extent it now has (and/or in the future may have) any interest, whether direct or indirect, in any other property or properties situated within five hundred (500) yards of the boundaries of the Entire Premises, it will utilize such property or properties with adequate parking therefor and for purposes compatible with the Shopping Center and the construction and uses of such property or properties will not be architecturally and/or ecologically adverse to the Shopping Center.

VOL 7451 PAGE 656

Section 3 - Plans for Construction.

3.1 Gordon Sibeck and Associates, 1407 Main Street (Suite 230), Dallas, Texas 75202, shall serve as Project architect ("Project Architect"), and Groves, Fernandez, Ludwig, Barry, Telford and Associates, Inc., (Consulting Engineers, Planners and Landscape Architects), 9030 Wurzbach Road, San Antonio, Texas 78240, shall serve as design engineer ("Project Engineer") for the Shopping Center. Except to the extent otherwise provided in the Supplemental Agreements, the fees and expenses of the Project Architect and Project Engineer (except as set forth in the last sentence of this paragraph of Section 3.1) shall be paid by Developer. The Department Stores may select a reputable engineering company ("Independent Engineer") to supervise and inspect the performance of the "Grading work", "Off-Site Work" and "On-Site Work", who shall have full access to the Shopping Center Site and to the plans and specifications referred to in Sections 4, 5 and 6, to the same extent as the Department Stores themselves. The fees and expenses of the Independent Engineer, if any, and the fees and expenses of the Project Engineer insofar as they relate to "Grading Work", "Off-Site Improvements" and "On-Site Improvements" shall be borne by each of the parties hereto in the ratio which the acreage of their respective Sites bears to the aggregate acreage of the Entire Premises.

Any substitute or successor Independent Engineer shall be designated by the Department Stores.

The Independent Engineer shall have access to the Shopping Center Site at all times during working hours to inspect the performance of the Grading Work, the Off-Site Improvements and the On-Site Improvements.

If the inspection of the Independent Engineer discloses a variance in construction from the requirements therefor as set forth in the final plans and specifications for such item of the work, he shall promptly notify the Project Engineer and the parties hereto.

If the Project Engineer agrees that there is such a variance and it is of a material nature which, if not remedied, would be impractical to thereafter rectify, the Project Engineer shall promptly undertake to have the necessary steps taken to eliminate such variance.

If the Project Engineer disagrees with the Independent Engineer, the dispute shall be submitted to arbitration as hereinafter provided in this Agreement unless the Developer, within fifteen (15) days of being notified of such dispute, elects not to have such dispute arbitrated and to either have the claimed variance remedied or proceed

with the work without attempting to remedy the claimed variance, or fails so to respond to either alternative.

If the Developer does not agree to submit to arbitration as herein provided, the Department Stores shall have all rights and remedies available to them at law and in equity and under this Agreement. Nothing herein contained shall be deemed to constitute a waiver by any of the Department Stores of their rights hereunder or an acquiescence to the continued prosecution of the disputed work by Developer.

Notwithstanding the foregoing, if at least two (2) of the Department Stores make written demand, in the manner provided in Section 47 of this Agreement for notices, that the work be stopped pending arbitration, or, if after receiving such notice, Developer insists upon continuing despite the opposition of the Independent Engineer, and if either action results in harm to the other, the one at fault shall bear the cost of remdying the situation including consequential damages. This obligation shall be joint and several as to the two (2) or more Department Stores making such demand and as to all of the parties designated within the term "Developer".

3.2 As promptly as possible, but, in any event, within thirty (30) days from the date hereof, Developer shall cause the Project Architect and/or Project Engineer to submit to the Department Stores for their approval design development drawings and outline specifications for the following phases of the development of the Shopping Center: (a) the "Grading Work" referred to in Section 4, (b) the "Off-Site Improvements" referred to in Section 5, (c) the "On-Site Improvements" referred to in Section 6, (d) the "Developer Facilities" referred to in Section 8, (e) the "Penney Facilities" (other than the "Penney Main Store Building" and the "Penney Additional Building") referred to in Section 9, (f) the "Ward Facilities" (other than the "Ward Main Store Building" and the "Ward Additional Building") referred to in Section 9, (g) the "Dillard Facilities" (other than the "Dillard Main Store Building") referred to in Section 9, and (h) the "Joske Facilities" (other than the "Joske Main Store Building") referred to in Section 9. The design development drawings shall be consistent with the Plot Plan and show, among other things, (i) location of all buildings and improvements, (ii) dimensions, elevations and maximum initial and future heights of all buildings and improvements (except as hereinabove otherwise excluded), (iii) architectural design concept, (iv) provisions for future horizontal and vertical expansion, (v) a specification of materials to be used in construction, (vi) lighting for the Common Facilities, (vii) "Parking Area" landscaping, (viii) "Parking Area" decking, and (ix) "Air Conditioned Mall" amenities. As promptly as possible after submission of the design development drawings and outline specifications for any such phase, the Department Stores shall notify the Project Architect of any objections thereto and Developer shall then cause the Project Architect to rectify any such objections and resubmit same to the Department Stores within thirty (30) days after any such notice until approved by them.

3.2A If the "Air Conditioned Mall" on the Developer Site is to bear upon or share foundations or footings in common with any Department Store "Main Store Building", the Project Architect shall also show on the design development drawings and outline specifications submitted to such Department Store pursuant to Section 3.2 hereof, the construct-

VOL 7451 PAGE 657

ion and engineering details of the joinder of such Department Store "Main Store Building" with the "Air Conditioned Mall" including, without limitation, the exact location of the columns in Developer's "Air Conditioned Mall" as they relate to such Department Store's Main Store Building so that the Department Store in question may determine which foundations, footings or other underground structural components, if any, of such Department Store Main Store Building will be used in common with the "Air Conditioned Mall".

VOL 7451 PAGE 658

3.3 As promptly as possible, but, in any event, within sixty (60) days after the date of the Department Stores' approval of the design development drawings and outline specifications for any such phase, Developer shall submit to the Department Stores for their approval final plans and specifications for such phase,which shall be developed from the approved design development drawings and outline specifications, but need not relate to matters concerning specific tenant requirements or tenant construction. As promptly as possible thereafter, the Department Stores shall notify the Project Architect of any objections thereto and Developer shall then cause the Project Architect to rectify any such objections and resubmit such final plans and specifications to the Department Stores within thirty (30) days after any such notice until approved by them.

3.4 Within a reasonable time following approval by the Department Stores of the design development drawings referred to in Section 3.2, each Department Store shall submit to each other Department Store and to Developer, for informational purposes only, drawings showing the location, dimension and height and exterior appearance of each building as planned to be initially constructed.

3.5 If Developer and any Department Store shall be unable to reconcile any difference as regards the design development drawings, outline specifications, final plans or final specifications referred to in Sections 3.2 or 3.3, the matter shall be resolved by arbitration.

3.6 The total of (i) all of the approved final plans and specifications for all phases of Developer's construction and (ii) the submitted drawings for the Department Stores' construction is herein collectively referred to as the "Design Plan" and as the final plans and specifications for each phase of Developer's construction are approved by the Department Stores and the drawings for each Department Stores' construction are submitted to Developer, the same shall be deemed incorporated in and constituting a part of the Design Plan. The Design Plan shall constitute a part of this Agreement and no change,material and/or substantial to any party, shall be made thereto nor shall there by any deviation material and/or substantial to any party therefrom in construction unless jointly consented to by the parties. Any such deviation and/or variance which may be required by reason of any governmental and/or insurance requirement shall be mutually satisfactory and acceptable to the Department Stores.

3.7 Any item required to be submitted by or on behalf of Developer for approval by the Department Stores under this Section 3 shall be accompanied by a letter stating that such item is submitted for approval, and unless accompanied by such a letter, such item shall not be deemed

to have been submitted for approval. Any item shall be deemed to have been submitted on the date of receipt. All items submitted under this Section 3 shall be sent to the following representatives of the parties at the following addresses:

To Developer:	Mr. Robert Zigler 1712 North Meridian Street Indianapolis, Indiana 46202
To Penney:	Mr. Phil Flad Regional Construction Services Manager 7615 LBJ Freeway Dallas, Texas 75240
To Ward:	Mr. Duane C. Schue Regional Engineering Manager 6200 St. John Avenue Kansas City, Missouri 64123
To Dillard:	D. R. Montgomery, Sr. Vice Pres. Dillard Department Stores c/o Dillard's Brown-Duncan P.O. Box 1950 Tulsa, Oklahoma 74102
To Allied:	Mr. F. E. Wilson Alstores Realty Corporation 1114 Avenue of the Americas New York, New York 10036

3.8 Notwithstanding the rights of approval reserved by the Department Stores and the right of supervision and inspection granted to the Independent Engineer under this Section, Developer shall be solely and primarily responsible for the design, performance, supervision and inspection of the "Grading Work", "Off-Site Improvements" and the "On-Site Improvements", and neither the reservation nor granting of such rights nor the giving by any Department Store of any approval shall be deemed to relieve Developer from such responsibility nor a waiver by any Department Store of any claim arising out of Developer's failure to meet such responsibility.

Section 4 - Grading Work.

4.1 As promptly as possible, but, in any event, within thirty (30) days from the date hereof, Developer shall furnish to each of the Department Stores a soil study made by a soil engineer acceptable to the Department Stores which study shall set forth the proposed compaction and soil stabilization for the "Grading Work" (as hereinafter defined). Developer covenants and agrees that such study as reviewed and approved by the Department Stores will be included in the final plans and specifications for the "Grading Work".

4.2 As promptly as possible following the Department Stores' approval of the final plans and specifications for the "Grading Work" referred to herein, but, in any event, within ten (10) days after such approval, Developer shall submit to each of the Department Stores the names of prospective contractors to perform the grading for the Entire Premises, which shall include (i) clearing, (ii) grubbing, (iii) removal of trees, shrubs and stumps, (iv) removal of top soil,

VOL 7451 PAGE 659

(v) cutting, (vi) filling, (vii) compaction of fill, (viii) excavation and compaction of building pads to within eight (8") inches of finished floor grade, (ix) soil borings, (x) compaction tests by a testing laboratory and (xi) foundation and parking area recommendations, all as set forth in the Design Plan (collectively, the "Grading Work"). The Developer shall then prepare a bidders list from such names to which the Department Stores may add, and Developer shall then solicit bids from the contractors on such list and shall award a contract(s) (to be prepared by Developer and approved by the Department Stores) for the Grading Work to the lowest responsible bidder(s) approved by the Department Stores. Such contract(s) shall be made in the name of the Developer in behalf of all of the parties hereto, on the one hand, and such contractor(s), on the other hand. Developer shall be responsible for supervision and management of the performance of the Grading Work. The contract price of each such contract shall be borne by the parties hereto in the proportion which the area of each party's Site bears to the area of the Entire Premises, and the Department Stores shall pay their proportionate shares from time to time as the work progresses upon submission by Developer of certifications by the Project Engineer, approved by the Independent Engineer, that (i) the work in question has been properly performed and (ii) such contractor(s) and all subcontractors and materialmen have been paid for all work and material in place, excepting only the work and materials to be paid for by the payment being requisitioned. The contract(s) shall provide for the completion of the Grading Work at least fifteen (15) months in advance of the "Opening Date"; provided, however, that the Grading Work for the Department Store "Main Store Building" and "Additional Building" pads shall be completed at least seventeen (17) months in advance of the "Opening Date".

VOL 7451 PAGE 660

Section 4A - Commencement of Work.

Developer covenants and agrees that no Grading Work (and/or any other work of any kind and/or nature whatsoever) shall be commenced on any portion of the Entire Premises until the later of the eleventh (11th) day following (i) the date of recording of this Agreement or (ii) the date on which the Developer shall have notified the Department Stores that it has awarded the contract(s) for the Grading Work as set forth in Section 4 hereof. Developer further covenants and agrees that no materials and/or supplies of any kind or nature whatsoever shall be stored on any portion of the Entire Premises until after the day following the date of recording of this Agreement.

Section 5 - Off-Site Improvements.

5.1 The term "Off-Site Improvements" shall mean the following improvements to be installed off the Entire Premises in accordance with the Design Plan:

(a) A water line(s) running to the property line of the Entire Premises which shall connect to a municipal or other public or quasi-public water facility, or if such a facility is not available, to an adequate well, reservoir, water tower or other water source to be provided by Developer and approved by the Department Stores, and equipped with adequate pumping facilities, all of which shall comply with all governmental and Board of

Fire Underwriters regulations and provide an adequate and satisfactory rate of flow and pressure necessary for the full enjoyment of the improvements to be erected upon the Shopping Center Site, as provided by this Agreement, including the operation of such a sprinkler and/or fire protection systems as may be required by law or the parties' respective insurance rating organizations;

(b) A sanitary sewer line(s) running to the property line of the Entire Premises which shall connect to municipal or other public or quasi-public sewage facilities or, if such facilities are not available, to a sewage system to be provided by Developer which shall comply with all applicable governmental regulations and which shall be adequate to handle sewage from the improvements to be erected on the Shopping Center Site as provided by this Agreement;

(c) A storm sewer line(s) running to the property line of the Entire Premises, adequate to handle and dispose of storm water from the Entire Premises;

(d) Gas (if available) and electric lines running to the property line of the Entire Premises of sufficient capacity to service the improvements to be erected on the Shopping Center Site as provided by this Agreement;

(e) Telephone lines running to the property line of the Entire Premises;

(f) Periphery roads, access roads, ramps, means of ingress and egress and other street improvements, traffic control devices and signalization, all as shown on the Plot Plan and Design Plan and/or as may be mutually agreed upon by the parties.

5.1A Developer acknowledges that it is aware of serious drainage problems in the general vicinity of Walzem Road and Crosswind Drive and the serious access problems between Walzem Road and the Entire Premises. Developer agrees that it is obligated as part of the Off-Site Improvements to take any and all steps which may be required in order to solve such problems to the full and complete satisfaction of the Department Stores.

5.2 Developer shall complete the installation of or cause the installation of the Off-Site Improvements to be completed at least nine (9) months in advance of the "Opening Date".

5.3 If any assessment for public improvements shall be levied against the Entire Premises or any part thereof by reason of the construction or installation of any roads, acceleration or deceleration lanes, highway widening improvements, gutters, curbs, entrances, overpasses, traffic signals or other traffic control devices, water lines, sanitary sewers, storm sewers or other off-site improvements of any nature whatsoever as a result of the initial development of the Entire Premises as a shopping center in accordance with the Design Plan, irrespective of whether construction shall have been started on or before the Opening Date ("Initial Off-Site Improvements"), the cost of such assessment (subject, however, to the provisions of the Supplemental Agreements) shall be paid by all of the parties hereto in the ratio that

VOL 7451 PAGE 661

the land area of each party's Site bears to the land area of the Entire Premises.

No party may, without the prior written consent of the other parties, dedicate title to, or any rights in, any off-site improvement of any nature whatsoever to any municipality or governmental agency if the other parties shall have contributed to the cost of the original installation thereof. If the municipality or governmental agency shall pay any money or offer any other type of consideration in return for such dedication, such consideration shall be shared by the parties hereto in the same proportion in which such parties paid for the cost of the original installation of such improvement.

VOL 7451 PAGE 662

If any assessment for Initial Off-Site Improvements shall be assessed against the Entire Premises, or any part thereof, each party against whose Site such assessment is levied shall furnish copies of such assessment to the other parties hereto, and the parties shall calculate the share of such assessment (subject, however, to the provisions of the Supplemental Agreements) payable by each of the parties pursuant to this Section 5.3. Each party shall pay the assessment levied against its Site, but if the payment made by any party shall exceed the share of the assessment payable by such party ("excess assessment"), such party shall be reimbursed for the excess assessment by the other party or parties who have paid less than the share of such assessment payable by such other party, such reimbursement to be made within thirty (30) days after demand therefor is served upon such other party.

Any party subject to the payment of any part of an assessment for Initial Off-Site Improvements shall have the right to protest the amount and validity thereof in the name of the party so assessed, at the cost of the party or parties so protesting.

5.4 The cost of the Off-Site Improvements, including, without limitation, Initial Off-Site Improvements, shall be paid by Developer except as may be otherwise set forth in the Supplemental Agreements.

5.5 Any such assessment for public improvements (exclusive, however, of assessments for Initial Off-Site Improvements) levied against the Entire Premises or any part thereof shall be paid by all of the parties hereto in the ratio that the land area of each party's Site bears to the land area of the Entire Premises; provided, however, that any such assessment initiated by any one or more of the parties hereto shall be borne solely by the party or parties initiating same; and, provided further, however, that any such assessment (except one initiated by one or more of the parties) benefitting less than all the parties shall be borne solely by the party or parties so benefitting.

Section 6 - On-Site Improvements.

6.1 The term "On-Site Improvements" shall mean the following improvements to be installed on the Entire Premises:

(a) Extension of the facilities referred to in Section 5.1(a), (b), (c), (d) and (e), to be installed underground to points to be designated by the

parties (i) at their sidewalk curb lines or (ii) within five (5') feet of the building lines of the buildings shown on the Plot Plan and Design Plan, whichever may be designated by the parties insofar as their respective Sites are concerned. The installation of underground electrical, telephone and security system conduits between Department Store "Main Store Buildings" and "Additional Buildings" are the responsibility of each of the Department Stores involved but shall be installed by the Developer, upon the request of the respective Department Store(s), at the sole cost of such requesting Department Store(s).

(b) "Common Facilities", other than the "Air Conditioned Mall" including, but not limited to, ring roads, spoke roads, sidewalks, berms, retaining walls, screen walls, soil stabilization, relocation of utility lines, acceleration and deceleration lanes, Shopping Center pylon sign, "Parking Area" paving and sub-gravel base, "Parking Area" identification signs, installation of light poles and lamps, concrete curbs, striping, landscaping other than so-called foundation landscaping, irrigation systems for landscaping, and traffic control signs, but excluding paving and landscaping between building walls and sidewalk curb lines, but including concrete curbs and gutters;

(c) Construction staging areas for each party's building site and haul roads leading thereto, which haul roads will be completed prior to commencement of construction and maintained by Developer during the course of construction;

(d) Backfill (of an amount and a consistency satisfactory to the Department Stores) shall be furnished by the Developer at a location on each of the Department Stores' Sites selected by the Department Store in question (it being understood, however, that the backfill shall be installed by each of the Department Stores on its Site).

6.2 As promptly as possible following the Department Stores' approval of the final plans and specifications for the On-Site Improvements referred to herein but, in any event, within ten (10) days after such approval, Developer shall submit to each of the Department Stores the names of prospective contractors to install the On-Site Improvements. The parties hereto shall then prepare a bidders list from such names to which the Department Stores may add, and Developer shall then solicit bids from the contractors on such list and shall award a contract(s) (to be prepared by Developer and approved by the Department Stores) for the On-Site Improvements to the lowest responsible bidder(s) approved by the Department Stores. Such contract(s) shall be made in the name of the Developer, on the one hand, and the contractor(s) on the other hand. Developer shall be responsible for supervision and management of the performance of the On-Site Improvements. The contract price of each such contract shall be borne by the parties hereto in the proportion which the area of each party's Site bears to the area of the Shopping Center Site; provided, however, that to the extent that any of the facilities described in Section 6.1(a) shall be installed in or designed or sized to service the Reserved Area, such proportion shall be that

VOL 7451 PAGE 663

which the area of each party's Site bears to the area of the Entire Premises. The Department Stores shall pay their proportionate shares from time to time as the work progresses upon submission by Developer of certifications by the Project Engineer, approved by the Independent Engineer, that (i) the work in question has been properly performed, and (ii) such contractor(s) and all subcontractors and materialmen have been paid for all work and material in place, excepting only the work and materials to be paid for by the payment being requisitioned. The contract(s) shall provide for completion of the On-Site Improvements specified in Sections 6.1(a) and (c) at least fifteen (15) months in advance of the "Opening Date", and those specified in Section 6.1(b), at least four (4) months in advance of the "Opening Date".

VOL 7451 PAGE 664

6.3 Any consent or approval which is required to be given by any part under Sections 3 through 6 shall not be unreasonably withheld by such party.

6.4 Developer covenants and agrees to provide temporary utility services at each of the Department Stores' Sites within six (6) months after the date of full execution of this Agreement.

6.5 Title to the Penney Site, Ward Site and Developer Site is subject to a perpetual subsurface easement and right of way along a route across and beneath the surface of said Sites for the construction, maintenance, operation, repair, alteration, replacement and changing of and removing, from time to time, of a pipeline or pipelines for the transportation of oil, gas or by-products therefrom, or any of them, such easement and right of way being fifty (50') feet wide and being twenty-five (25') feet on each side of a certain described centerline, as set forth in an "Agreement for Vacation of Existing Easement and Grant of Substituted Easement" recorded in Volume 7413, Page 317 et seq., Deed Records of Bexar County, Texas, by and between Developer and Lo-Vaca Gathering Company ("Lo-Vaca Easement"). In connection with the Lo-Vaca Easement, Developer covenants and agrees as follows:

(a) As of the date of this Agreement, the pipeline or pipelines situated on the Entire Premises has been rendered inactive and inoperable;

(b) Prior to September 30, 1974, the said pipeline or pipelines will be capped at a point north of the northerly right of way line of Walzem Road and at a point south of the south line of the Entire Premises;

(c) Upon completion of the said capping, the pipeline or pipelines then situated outside the Lo-Vaca Easement shall be considered abandoned in place and shall be removed by Developer as part of the Grading Work referred to in Section 4 hereof;

(d) To promptly transmit to the Department Stores copies of any and all notices received by it insofar as the Lo-Vaca Easement is concerned; and

(e) To promptly take any and all action which may be required of it pursuant to the Lo-Vaca Easement.

Section 7 - Floor Area.

7.1 The term "Floor Area", as used herein, shall mean, with respect to each building or structure on the Entire Premises, the number of square feet of floor area at each level or story (including mezzanines and basements) lying within the exterior faces of exterior walls (except

party walls as to which the center line, not the exterior faces, shall be used), excluding, however, (i) outdoor sales areas which are not heated or air conditioned, (ii) the "Air Conditioned Mall" (but not kiosks therein), (iii) truck parking, truck turn-around and dock areas, whether interior or exterior, (iv) the upper levels of any multi-deck stock area, and (v) common service and fire corridors on the Developer Site and (vi) penthouse areas used for mechanical or electrical equipment. No deduction shall be made from Floor Area computed under the foregoing definition by reason of columns, stairs, escalators, elevators, dumb-waiters, conveyors or other interior construction or related equipment within the building involved.

7.2 At least thirty (30) days prior to the determination of the number of square feet of Floor Area in each instance in which a determination thereof shall be required under the provisions of this Agreement, the Project Architect shall submit each such determination to all parties for their respective reviews and each party shall have thirty (30) days from such submission to file objections to such determination with the Project Architect. The Project Architect shall thereafter make and certify (and delivery to each of the parties) a final determination taking into account any such objections which may have been filed and correcting any errors with respect thereto. The certification referred to in the preceding sentence shall be amended from time to time to reflect changes in the Floor Area. Notwithstanding anything to the contrary contained in this Agreement, during the period of any damage, destruction, razing, rebuilding, repairing, replacement or reconstruction to, on or of any building in the Shopping Center, the Floor Area of such building shall be deemed to be the same as the Floor Area of such building immediately prior to such period, and upon the substantial completion of the rebuilding, repairing, replacement or reconstruction of such building, the Project Architect shall make and certify a new determination of Floor Area for such building and for the Shopping Center, in the manner provided in this Section 7.2. as of such date of substantial completion.

Section 8 - Developer Facilities.

8.1 As promptly as possible after completion of the Grading Work on the Developer Site, but, in no event, later than fourteen (14) months in advance of the "Opening Date", Developer shall commence (in the manner and after the notices herein required) and prosecute with due diligence, at its sole cost and expense, the construction upon the Entire Premises of the following improvements ("Developer Facilities"), to the extent that the same are not to be performed as part of the On-Site Improvements under the contracts referred to in Section 6.1, in accordance with the Plot Plan and Design Plan so that the Developer Facilities, the "Penney Facilities", the "Ward Facilities", the "Dillard Facilities" and the "Joske Facilities" shall constitute a unified shopping center:

(a) Two-level fully sprinklered store buildings for tenants ("Mall Store Buildings") within the Permissible Building Lines shown therefor, which shall have an aggregate Floor Area of not less than 135,000 or more than 180,000 square feet on each level and an aggregate Floor Area of not less than 290,000 or more than 355,000 square feet in total.

VOL 7451 PAGE 665

(b) A two-level enclosed, fully sprinklered, air conditioned and heated mall ("Air Conditioned Mall") which shall be architecturally harmonious with the Mall Store Buildings and the Department Store "Main Store Buildings", and in accordance with standards customarily employed in enclosed-type heated and air conditioned shopping centers. Specifically, Developer shall furnish and install separate heating and cooling systems or combination heating and cooling system capable of adequately ventilating the Air Conditioned Mall and maintaining temperatures therein in accordance with the following standards:

(i) Heating Season: A prevailing minimum indoor temperature of approximately 72°F with outside temperatures ranging to as low as 15°F;

(ii) Cooling Season: A prevailing maximum indoor temperature of 75°F and a relative humdity of 50% with an outside dry bulb temperature ranging to as high as 100°F coincident with a wet bulb temperature of 79°F.

To the extent that any such equipment or appurtenances thereto shall be roof mounted, the same shall be obscured from ground level view by parapet walls or other appropriate screening.

The Developer and the Department Stores recognize national energy guidelines, and will set building thermostats in accordance with good energy conservation criteria. The temperatures will be controlled through setting of thermostats in the operation of heating and cooling equipment during energy emergency, and not by the changing of building design or mechanical design.

Developer agrees that floor to floor height of the Air Conditioned Mall should not exceed eighteen (18') feet without prior written approval from the Department Stores. In the event the floor to floor dimensions of any Department Store "Main Store Building" differ from the floor to floor dimensions in the Air Conditioned Mall, then any one or more of the Department Stores may require Developer to provide floor offsets in the Air Conditioned Mall so that the floor to floor dimensions may be maintained within the requesting Department Store "Main Store Building", and said mall offsets shall be accomplished by both steps and ramps with design concept subject to the approval of the Department Stores as part of the Design Plan.

(c) Fire corridors complying with local law and building code requirements along the "Penney's Main Store Building" and the "Joske Main Store Building" at the locations shown on Exhibit G hereto which will provide direct access to the "Parking Area" for persons leaving such building through fire exits opening onto such corridors. At Developer's election, such corridors may serve other premises in addition to "Penney's and Joske's Main Store Buildings" and may be extended to connect with the Air Conditioned Mall. It is agreed, how-

VOL 7451 PAGE 666

ever, that the fire exits of "Penney's and Joske's Main Store Buildings" which open onto such corridors will be located at least twenty (20') feet measured horizontally) from the Air Conditioned Mall and that such corridors need not extend any closer to the Air Conditioned Mall than is necessary for them to afford access to the "Parking Area" from such exits. Developer hereby grants Penney and Allied a non-exclusive easement permitting its customers,employees, agents and members of the public who are present in its "Main Store Building" to use such corridors in the event of fire or other emergency for the purpose of passing from such building through such fire exits directly to the "Parking Area".

The rights and easements granted Penney and Allied and the obligations of Developer, under the provisions of this Sub-section (c) shall remain in effect during the term of this Agreement and thereafter so long as the "Penney Main Store Building" and/or the "Joske Main Store Building", or any replacement thereof, as the case may be, remains in operation.

For the purpose of determining the rights and obligations of Penney, Allied and Developer with respect to the aforesaid fire corridors, the walls, roof and floor of said fire corridors shall be deemed to be part of the Developer Facilities and the interior walls of said fire corridors adjacent to the "Penney or Joske Main Store Building", as the case may be, shall be deemed to be part of the respective "Main Store Building".

(d) An illuminated parking area ("Developer Parking Area"), which shall contain not less than 5.0 car spaces, of the character shown on the Plot Plan, for each 1,000 square feet of Floor Area of the Developer Site. The lighting for the said Parking Area shall at all times be able to provide an intensity at thirty (30") inches above ground level of not less than one and one-half (1½) foot candles minimum maintained throughout,and at night time hours commencing one (1) hour after the closing of the Shopping Center, shall be capable of providing twenty-five (25%) per cent lighting which means that one (1) lighting unit of the four (4) lighting units located on each lighting pole shall furnish illumination.

(e) All other "Common Facilities" on the Developer Site.

The word "commence" as utilized in the first sentence of this Section 8.1 shall be deemed to refer to pouring footings and foundations.

8.2 Prior to commencement of construction, Developer shall furnish the Department Stores with copies of a construction loan commitment and a permanent loan commitment from a responsible lending institution(s) or shall furnish such other evidence as the Department Stores may reasonably require to satisfy them that Developer will have the

VOL 7451 PAGE 667

means of paying for the Grading Work and for the Off-Site and On-Site Improvements and the Developer Facilities. The maturity of said construction loan mortgage shall be such so as to permit an adequate period for the completion of construction and the closing of the permanent long term mortgage and its retirement out of the proceeds of the permanent long term mortgage. The permanent long term mortgage commitment shall be of sufficient duration so as to allow adequate time for the completion of construction prior to the expiration thereof.

VOL 7451 PAGE 668

8.3 Construction of the Developer Facilities shall be substantially completed by February 1, 1976.

Section 9 - Department Store Facilities.

By the later of (a) ten (10) months from the date hereof, or (b) as soon as is reasonably practicable after (i) completion of the Grading Work, (ii) compliance by Developer with Section 8.2, and (iii) commencement of construction of the Developer Facilities, each Department Store shall commence (provided, however, that Dillard shall not be required to commence construction prior to July 1, 1976) and prosecute with diligence, at its sole cost and expense, the construction upon its Site, in accordance with the Plot Plan and the Design Plan, of the following improvements, to the extent that the same are not to be performed as part of the On-Site Improvements under the contracts referred to in Section 6.1 and/or by Developer as herein set forth:

9.1 The following improvements ("Penney Facilities") shall be constructed on the Penney Site":

(a) Penney shall construct a two-level store building within the Permissible Building Lines shown therefor on the Plot Plan, having an aggregate Floor Area of not less than 120,000 square feet ("Penney Main Store Building"), and which shall have a major entrance to each level of the Air Conditioned Mall;

(b) Penney shall have the option, if it so desires, to construct an additional store building within the Permissible Building Lines shown therefor on the Plot Plan, having an aggregate Floor Area of not more than 22,000 square feet, suitable for use as a store specializing in the sale of tires, batteries, automobile parts and accessories, gasoline and lubricants and inthe servicing and repair of motor vehicles (sometimes referred to as an "automotive center") ("Penney Additional Building");

(c) Developer shall construct an illuminated parking area ("Penney Parking Area"), which shall contain not less than 5.0 car spaces of the character shown on the Plot Plan, for each 1,000 square feet of Floor Area of the Penney Site. The lighting for the said Parking Area shall at all times be able to provide an intensity at thirty (30") inches above ground level of not less than one and one-half (1½) foot candles minimum maintained throughout and, at night time hours commencing one (1) hour after the closing of the Shopping Center, shall be capable of providing twenty-five (25%) per cent lighting, which means that one (1) lighting

unit of the four (4) lighting units located on each lighting pole shall furnish illumination.

(d) Penney shall construct the sidewalk paving, install its exterior building lighting and do the initial landscaping and irrigation (desired by it) between building walls and sidewalk curb lines on the Penney Site, to the extent not included in On-Site Improvements.

9.2 Construction of the Penney Facilities shall be substantially completed thirty (30) days prior to the "Opening Date".

9.3 The following improvements ("Ward Facilities") shall be constructed on the Ward Site:

(a) Ward shall construct a two-level store building within the Permissible Building Lines shown therefor on the Plot Plan, having an aggregate Floor Area of not less than 150,000 square feet ("Ward Main Store Building"), and which shall have a major entrance to each level of the Air Conditioned Mall;

(b) Ward shall have the option, if it so desires, to construct an additional store building within the Permissible Building Lines shown therefor on the Plot Plan, having an aggregate Floor Area of not more than 28,000 square feet, suitable for use as a store specializing in the sale of tires, batteries, automobile parts and accessories, gasoline and lubricants and in the servicing and repair of motor vehicles (sometimes referred to as an "automotive center") ("Ward Additional Building");

(c) Developer shall construct an illuminated parking area ("Ward Parking Area") which shall contain not less than 5.0 car spaces, of the character shown on the Plot Plan, for each 1,000 square feet of Floor Area on the Ward Site. The lighting for the said Parking Area shall, at all times, be able to provide an intensity at thirty (30") inches above ground level of not less than one and one-half (1½) foot candles minimum maintained throughout and, at night time hours commencing one (1) hour after the closing of the Shopping Center, shall be capable of providing twenty-five (25%) per cent lighting, which means that one lighting unit of the four (4) lighting units located on each lighting pole shall furnish illumination;

(d) Ward shall construct the sidewalk paving, install its exterior building lighting, and do the initial landscaping and irrigation (desired by it) between building walls and sidewalk curb lines on the Ward Site, to the extent not included in On-Site Improvements.

9.4 Construction of the Ward Facilities shall be substantially completed thirty (30) days prior to the "Opening Date".

VOL 7451 PAGE 669

9.5 The following improvements ("Dillard Facilities") shall be constructed on the Dillard Site:

(a) DDSI or Condev shall construct a two-level store building within the Permissible Building Lines shown therefor on the Plot Plan, having an aggregate Floor Area of not less than 155,000 square feet ("Dillard Main Store Building") and which shall have a major entrance to each level of the Air Conditioned Mall;

(b) Developer shall construct an illuminated parking area ("Dillard Parking Area") which shall contain not less than 5.0 car spaces, of the character shown on the Plot Plan for each 1,000 square feet of Floor Area on the Dillard Site. The lighting for the said Parking Area shall, at all times, be able to provide an intensity at thirty (30") inches above ground level of not less than one and one-half (1½) foot candles minimum maintained throughout and, at night time hours commencing one (1) hour after the closing of the Shopping Center, shall be capable of providing twenty-five (25%) per cent lighting,which means that one (1) lighting unit of the four (4) lighting units located on each lighting pole shall furnish illumination.

(c) DDSI or Condev shall construct the sidewalk paving, install its exterior building lighting and do the initial landscaping and irrigation between building walls and sidewalk curb on the Dillard Site, to the extent not included in On-Site Improvements.

9.6 Except as set forth in Section 11 hereof, construction of the Dillard Facilities shall be substantially completed thirty (30) days prior to the "Opening Date".

9.6A The following improvements ("Joske Facilities") shall be constructed on the Joske Site:

(a) Joske or Allied shall construct a two-level store building within the Permissible Building Lines shown therefor on the Plot Plan, having an aggregate Floor Area of not less than 120,000 square feet ("Joske Main Store Building") and which shall have a major entrance to each level of the Air Conditioned Mall;

(b) Developer shall construct an illuminated parking area ("Joske Parking Area") which shall contain not less than 5.0 car spaces, of the character shown on the Plot Plan for each 1,000 square feet of Floor Area on the Joske Site. The Joske Parking Area shall be double-decked as shown on the Plot Plan. The lighting for the said Parking Area shall, at all times, be able to provide an intensity at thirty (30") inches above ground level of not less than one and one-half (1½) foot candles minimum maintained throughout,and at night time hours commencing one (1) hour after the closing of the Shopping Center shall be capable of providing twenty-five (25%) per cent lighting which means that

VOL 7451 PAGE 670

one (1) lighting unit of the four (4) lighting units located on each lighting pole shall furnish illumination.

(c) Joske or Allied shall construct the lower level sidewalk paving, install its exterior building lighting and do the initial landscaping and irrigation between building walls and sidewalk curb lines on the Joske Site, to the extent not included in On-Site Improvements.

9.6B Construction of the Joske Facilities shall be substantially completed thirty (30) days prior to the "Opening Date".

9.7 The required completion dates set forth in Section 9.2, 9.4, 9.6 and 9.6B, as the case may be, may be extended by any Department Store which shall be delayed in the completion of its Facilities by the number of days such Department Store is so delayed by reason of the failure of Developer to meet any of the document submission or completion dates specified in Sections 3.2, 3.3, 4, 5.2, 6.2 or 8.3.

9.8 Anything to the contrary herein notwithstanding, each Department Store may extend the exterior walls of its store building up to six (6') feet outside the Permissible Building Lines on its Site as shown on Exhibit G, provided that the Department Store in question does not exceed the Floor Area limitations set forth in this Agreement, and further provided that the Department Store in question does not extend the exterior walls of its store building beyond the boundary lines of its own Site.

Section 10 - Other Tenancies and Occupancies.

10.1 At least six (6) months prior to the prospective "Opening Date" referred to in the first sentence of Section 11 hereof, Developer shall furnish to the Department Stores evidence satisfactory to them that it has entered into bona fide leases or occupancy agreements (non-cancellable except for default, condemnation, loss of other tenants, non-compliance with construction provisions or provisions for restoration in case of substantial damage by fire or other casualty, or for like material matters) covering an aggregate of 100,000 square feet of Floor Area on each level of the Mall Store Buildings. Such leases shall be made with tenants who (a) represent a sound and balanced diversification of merchandise and services, (b) are well qualified and customarily engage in or are capable of an intensive and continuous merchandising and promotional program, (c) will be of good repute, and (d) will fixture, decorate and maintain their respective store premises in a tasteful and decorous manner. Developer will use its best efforts to effectuate a balanced distribution of said tenants on all levels of said buildings in order to avoid a concentration of any particular type or class of tenant in any one area.

10.2 Developer will, at all times, enforce the provisions of all leases and occupancy agreements relating to the Developer Site and exhaust all available remedies to insure compliance therewith by the tenants and occupants thereunder.

VOL 7451 PAGE 671

10.3 No Department Store shall be under any duty or obligation to open for business unless and until (a) tenants and operators of at least seventy-five (75%) per cent of Floor Area on each level of the Mall Store Buildings have opened or are about to open their stores for business in the premises demised to them under the aforementioned leases or to be occupied by them under the aforementioned agreements, as the case may be, and (b) at least two (2) other Department Stores have opened their respective stores for business or are about to open same for business.

VOL 7451 PAGE 672

Section 11 - Shopping Center Opening Date.

Each party shall, subject to "Unavoidable Delays", use its best efforts (which shall not require overtime or premium rates) to open its Facilities for business with the public on or prior to Wednesday, August 4, 1976, or as soon thereafter as possible; provided, however, that Dillard shall not be required to open for business with the public prior to August 3, 1977, and further provided, however, that no Department Store shall be required to so open its Facilities (i) prior to twenty-four (24) months from the date hereof, (ii) if construction of the Developer's Facilities shall not have been fully completed, or (iii) if Developer shall not then have fulfilled the tenancy requirements of Section 10.1, or (iv) if the requirements of Section 10.3(a) shall not then have been fulfilled, or (v) if the other Department Stores shall not be ready to open for business with the public. Such date may be extended, as to any Department Store by the number of days such Department Store is delayed in completing or opening its Facilities by reason of the failure of Developer to meet any of the submission or completion dates specified in Sections 3.2, 3.3, 4, 5.2, 6.2 or 8.3. In the event that the Shopping Center shall not open on the date above specified, the parties shall, within thirty (30) days after the actual opening, execute and exchange a written agreement in recordable form which will set forth the Opening Date. The date on which at least three (3) of Penney, Ward, Dillard and Joske, and tenants and operators of at least seventy-five (75%) per cent of the Floor Area on each level of the Mall Store Buildings, shall actually open for business with the public, is herein referred to as the "Opening Date". Anything to the contrary herein notwithstanding, in the event the Opening Date shall not have occurred prior to September 1, 1977, then for purposes of this Agreement, September 14, 1977 shall be deemed to be the Opening Date. In no event shall any Department Store be required to open its Facilities during the period from October 1 of any year to January 31 of the succeeding year, during the period from May 1 to August 1 of any year, or during the 30-day period prior to Easter Sunday; provided, however, that insofar as Dillard is concerned, the date "July 15" shall be substituted for "August 1".

Section 11A - Work Progress Schedules.

In order to make possible the expeditious construction by each party of the Facilities it is required to construct pursuant to this Agreement and in order to enable fulfillment by each of the parties hereto of its obligations leading to the opening of its respective Facilities for business with the public as contemplated by this Agreement, the parties shall periodically (but, in any event, not less frequently than once in each three (3) month period commencing with

(next page 21A)

the sixtieth (60th) day following the date of this Agreement) exchange work progress schedules through the Project Architect concerning the commencement dates, progress of and anticipated completion dates for the Grading Work, Off-Site Improvements, construction of the various Facilities and the prospective Opening Date. Any substantial deviation from the dates set forth in this Agreement and/or from prior work progress schedules shall be communicated to the other parties.

It is understood that certain construction on and/or in connection with the Dillard Main Store Building may take place, in whole or in part, after Penney and/or the Developer open for business with the public. In such event, Dillard covenants and agrees, insofar as such construction is concerned, as follows:

1. The Parking Areas (except those on the Dillard Site) shown on the Plot Plan shall be fully completed and available for use by the occupants of the Entire Premises prior to the later of (a) the commencement of any such construction or (b) a date thirty (30) days prior to the opening for business of the Penney Main Store Building.

2. In the event that, in the course of construction or otherwise, any improvements on the Entire Premises are disturbed, Dillard shall immediately repair and restore same to at least their condition existing prior to the commencement of construction;

3. Dillard shall perform its work or cause the work on the Dillard Site to be performed so as not to interfere with the then operation of the Entire Premises and shall comply or cause compliance, with the following requirements at Dillard's sole cost and expense:

   (i) Dustproof Control - Dillard shall place temporary structurally sound and attractive plywood partitions at locations therefore selected by Penney. All such partitions shall be completely dustproofed by the additional use of plastic cloth or other like materials and all joints will be taped, caulked and made air tight;

   (ii) Dust and Dirt Control - Dillard shall, from time to time, spread water and chemicals over the Parking Area so as to eliminate all dust and shall mechanically clean and sweep the Parking Area. Dillard shall also arrange for frequent picking up of windblown debris;

   (iii) Construction Schedule - Dillard shall furnish to the other parties construction schedules as to all work to be performed and the periods of time which will be required to do the said construction;

   (iv) Access - Access for both motor vehicles and pedestrians betweenthe Parking Areas and all entrances to buildings on the Entire Premises shall be maintained at all times and shall not be obstructed in any way or manner whatsoever;

   (v) Construction Trucks and Trailers - shall not be stored on the Entire Premises or any portion thereof except on the staging area, if any, which must first be approved by Penney.

VOL 7451 PAGE 673

(vi) Tests, Connections, Tap-ins and the Like - shall be done at times when the Shopping Center is not open for business and shall be done in such a manner so as not to interfere with the operation of the Shopping Center. Notice of such tests, connections, tap-ins and the like shall be given to the other Department Store store managers and to the Developer at least five (5) days prior to same;

(vii) Protection - Dillard shall protect the Entire Premises from falling debris, misuse of equipment and the like;

4. Anything to the contrary notwithstanding, the sprinkler systems serving the Entire Premises (except Dillard's Main Store Building) shall remain fully and completely operational at all times;

5. Dillard shall not permit construction employees, construction materials, trucks, motor vehicles, equipment, etc. to have access to the Entire Premises through any portion thereof except as shall be specifically approved by Penney, and construction employees shall not park nor shall materials and supplies be stored and/or assembled anywhere on the Entire Premises except in the staging area hereinabove referred to;

6. The contractor doing the said construction shall carry public liability insurance under a policy or policies naming the Developer and the other Department Stores as additional insureds and such insurance shall have limits of not less than $2,000,000 per person and $5,000,000 per occurrence in respect to bodily injury or death and not less than $1,000,000 per occurrence in respect to property damage; and

7. Dillard shall be fully and completely responsible for the enforcement of the provisions hereinabove set forth, shall indemnify and hold the Developer and the other Department Stores harmless from all claims, debts, demands, injuries, loss or damage occasioned by or arising either directly or indirectly, as the result of the said construction and shall pay any and all costs in connection therewith.

VOL 7451 PAGE 674

Section 12 - Unavoidable Delays.

The time within which any party hereto shall be required to perform any act under this Agreement, other than the payment of money, shall be extended by a period of time equal to the number of days during which performance of such act is delayed unavoidably by strikes, lockouts, acts of God, governmental restrictions, failure or inability to secure materials or labor by reason of priority or similar regulation or order of any governmental or regulatory body, enemy action, civil disturbance, fire, unavoidable casualties or any other cause beyond the reasonable control of such party ("Unavoidable Delays"), excluding, however, the inability or failure of any party to obtain any financing which may be necessary to carry out its obligations and excluding insofar as the Developer is concerned, Federal, State, County and Municipal laws, ordinances, rules and regulations in effect prior to the later of (i) the date of recording of this Agreement or (ii) the date of commencement of construction by Developer; and also excluding the requirement that Developer comply with all ecological and Environmental Protection Agency (and/or its substantive successors and such relevant State agencies whose purpose is equivalent in purpose and effect) requirements as set forth in the last recital in the initial portion of this Agreement. Notwithstanding the foregoing, unless the party entitled to such extension shall give notice to the other interested party of its claim to such extension within twenty (20) days after the event giving rise to such claim shall have occurred, there shall be excluded in computing the number of days by which the time for performance of the act in question shall be extended, the number of days which shall have elapsed between the occurrence of such event and the actual giving of such notice.

Section 13 - Remedies of Department Stores Prior to Opening Date.

13.1 In the event Developer shall fail to (i) commence construction of Developer Facilities by the date specified in Section 8.1, or (ii) furnish the mortgage commitments as provided in Section 8.2, or (iii) fulfill the tenancy requirements of Section 10, or (iv) complete construction of the Developer Facilities by the date specified in Section 8.3, as said date may be extended by Unavoidable Delays or within five (5) years from the date hereof irrespective of Unavoidable Delays, whichever shall first occur, or (v) open the Developer Facilities for business on the date specified in Section 11, as said date may be extended by Unavoidable Delays or within one (1) year from the completion of construction of the Developer Facilities irrespective of Unavoidable Delays, whichever shall first occur, or (vi) obtain any and all permits which may be required in order to enable the construction and operation of the entire Shopping Center as contemplated by this Agreement (provided, however, that each Department Store shall be required to obtain building permits for its own Main Store Building and Additional Building, as the case may be)

VOL 7451 PAGE 675

and such default shall not have been remedied within thirty (30) days after notice thereof by any Department Store to Developer, with a copy to the other Department Stores, then any Department Store, within thirty (30) days after the conclusion of the immediately preceding referred to thirty (30) day period, may give notice to Developer, with a copy to the other Department Stores, requesting the following information and documents: (i) an itemization of the purchase price of the Developer Site, which shall be an amount equal to the price per acre to Developer of acquiring the Entire Premises, multiplied by the number of acres of the Developer Site, plus the cost of the Grading Work and the On-Site Improvements fairly allocable to the Developer Facilities thereon to the extent then completed, plus all other sums actually expended by Developer in connection with the acquisition, development and improvement of the Developer Site, (ii) copies of all contracts and agreements made by Developer in connection with the acquisition, development and improvement of the Developer Site, and the construction of the Developer Facilities or any other improvements which Developer shall be obligated to make hereunder, together with all plans, layouts, engineering data and highway studies prepared in connection therewith and all licenses and permits issued in connection therewith, (iii) copies of all leases and occupancy agreements theretofore entered into by Developer relating to the occupancy of any part of the Developer Site, and (iv) a copy of the mortgage commitments referred to in Section 8.2, and the construction mortgage itself if the same shall have been executed. Then, (a) at any time within sixty (60) days thereafter, upon notice to the other parties, any one or more of the Department Stores may elect to resell and reconvey its or their Site or Sites, as the case may be, to Developer, together with its or their Facilities, as the case may be, thereon to the extent then completed, for a price equivalent to the purchase price actually paid by it or them for its or their Site, as the case may be, plus all of its or their costs and expenses, as the case may be, theretofore incurred in connection with the acquisition and/or development (including, without limitation, the amounts paid or payable in connection with Grading Work, Off-Site Improvements and On-Site Improvements, as the case may be) of its or their Site or Sites, as the case may be, and construction of its or their Facilities, as the case may be, together with interest at a rate of eight (8%) per cent per annum on such purchase price, costs and expenses from the date paid by any such Department Store until the date of payment or repayment by Developer, or (b) if no Department Store elects to resell its Site, the Department Store first giving notice to Developer and to the other Department Stores within thirty (30) days after the expiration of said sixty (60) day period, may elect to purchase the Developer Site, together with the Developer Facilities to the extent then completed, for the actual cost to Developer of the Developer Site, plus all of Developer's costs theretofore incurred in connection with the construction of the Developer Facilities, or (c) if only one Department Store elects to resell its Site, any one or more of the other Department Stores may elect, upon the giving of notice to the other parties within thirty (30) days after the giving of the notice referred to in clause (a), to purchase (i) from Developer, the Developer Site, together with the Developer Facilities to the extent then completed, for the actual cost to Developer of the Developer Site, plus all of Developer's costs theretofore incurred in connection with the construction of the Developer Facilities and/or (ii) from the selling Department Store, its Site, together with the Facilities thereon to the extent then

VOL 7451 PAGE 676

completed, for the actual cost to such Department Store of its Site, plus all of its costs and expenses theretofore incurred in connection with the acquisition and/or development (as set forth above) of its Site and the construction of its Facilities together with interest (as set forth above). If more than one Department Store shall give such notice, the purchasing Department Stores shall take title to the Developer Site and the selling Department Store's Site, if any, as tenants in common, with each purchasing Department Store acquiring a ½ or 1/3 or ¼ undivided interest, as the case may be, in the Developer Site and the selling Department Store's Site, if any. The selling and purchasing parties shall be entitled to inspect and audit each other's books and records at reasonable times in order to verify the computation of the purchase price under this Section, which books and records shall be retained by such parties, at their respective offices set forth at the head of this Agreement, at least until the Opening Date.

13.2 The closing of title and the delivery of the deed under Section 13.1 shall take place, at such place as the Department Store(s) shall designate in the general area in which the Entire Premises is located, sixty (60) days after the giving of such notice of election and if any Department Store shall elect to resell its Site, conveyance shall be by Limited (Special) Warranty Deed.

13.3 If any Department Store shall elect to purchase the Developer Site in accordance with clauses (b) or (c) of Section 13.1, at the closing of title, Developer shall tender to the purchaser executed assignments of (i) all leases and occupancy agreements theretofore entered into by Developer of every kind and nature, relating to the occupancy of any part of the Developer Site, (ii) all contracts and agreements made by Developer providing for or relating to the construction of the Developer Facilities and any other improvements which Developer shall be obligated to make hereunder, together with all plans, layouts, engineering data and highway studies prepared in connection therewith and all licenses and permits issued in connection therewith, (iii) all other contracts and agreements of every kind and nature theretofore executed by Developer pursuant to the provisions of this Agreement, and (iv) the mortgage commitments referred to in Section 8.2, if assignable. Any of the leases, contracts and agreements referred to in (i) through (iv) above, of which the purchaser shall not accept an assignment or which the purchaser shall not have previously approved following request therefor, shall, upon notice to such effect given by the purchaser to the other party thereto, ipso facto, be terminated and of no further force and effect as between such party and the purchaser nor shall the same in any way thereafter be deemed to affect or be a charge on the Entire Premises. The purchaser shall, by the acceptance of any lease or occupancy agreement referred to in (i) above, be deemed to have assumed all of Developer's covenants and obligations therein to such tenant or operator in respect of the Entire Premises. Conveyance by Developer to the purchaser shall be by General Warranty Deed and the title shall be free and clear of all liens, charges and encumbrances other than those leases and occupancy agreements of which the purchaser shall elect to accept assignments, the lien of the construction mortgage, if any, referred to in 8.2, any easements for public utilities which Developer shall have granted with the consent of all the purchasing Department Store or Stores in connection with the development of the Shopping Center, the lien of current real estate

VOL 7451 PAGE 677

taxes (to be prorated as of the closing date) not yet due and payable, and any dedication for public use which Developer shall have theretofore made for any governmental authority with the consent of the purchasing Department Store or Stores. Following the giving of any such notice by a Department Store to Developer as reflected in the first sentence of this Section 13.3, Developer shall not enter into any further contracts or agreements, or leases or occupancy agreements of the character referred to in clauses (ii) and (iii) above, without the prior consent of the purchasing Department Store or Stores; provided, however, that if none of said Department Stores purchase the Developer Site within eight (8) months after the giving of such notice, this restriction shall lapse at the expiration of the said eight (8) month period.

VOL 7451 PAGE 678

13.4 This Agreement shall terminate on the closing of title as to such of the Department Stores as shall elect to sell under clause (a) of Section 13.1.

Section 13A - Remedies of Developer and Other Department Stores Prior to Opening Date as to a Defaulting Department Store.

13A.1 In the event any Department Store shall fail to (i) commence construction of its Facilities by the later of (a) nine (9) months from the date hereof, or (b) the latest of the dates referred to in item (b) of the first sentence of Section 9 hereof, or (ii) complete construction of its Facilities by September 1, 1977, as said date may be extended by Unavoidable Delays or within five (5) years from the date hereof, irrespective of Unavoidable Delays, whichever shall first occur, and such default shall not have been remedied within thirty (30) days after notice thereof by Developer to such Department Store, with a copy to the other Department Stores, then Developer or any non-defaulting Department Store(s), within thirty (30) days after the conclusion of the immediately preceding referred to thirty (30) day period, may give notice to the defaulting Department Store, as the case may be, with a copy to the Developer and the other Department Stores, requesting the following information: (i) an itemization of the purchase price of the defaulting Department Store's Site paid to Developer for acquiring its Site, plus the cost of the Grading Work, the Off-Site Improvements, the On-Site Improvements and the Project Engineer, to the extent then paid by such defaulting Department Store, plus (ii) all other sums actually expended by such defaulting Department Store in connection with the acquisition, development and improvement of its Site. Then, at any time before sixty (60) days after such information is furnished by the defaulting Department Store, upon notice to the Department Stores, Developer may elect to purchase or repurchase such defaulting Department Store's Site, together with the Facilities thereon to the extent then completed, for a price equivalent to the purchase price actually paid by it for its Site plus all of its costs and expenses theretofore incurred in connection with the acquisition of its Site and construction of its Facilities (collectively referred to as the "Buy Back Price"), together with interest at a rate of eight (8%) per cent per annum on such purchase price, costs and expenses from the date paid by such defaulting Department Store until the date of payment or repayment by Developer. If Developer fails to elect to purchase the defaulting Department Store's Site and Facilities (and give such notice thereof) before sixty (60) days after such requested information is furnished, the non-defaulting Department Stores shall have the right to elect to make such purchase for the Buy Back Price by giving notice to Developer and the other Department Stores within thirty (30) days thereafter. If only one non-defaulting Department Store elects to repurchase the defaulting Department Store's Site, any one or more of the other non-defaulting Department Stores may elect, upon the giving of notice to

the other parties within thirty (30) days after the giving of such notice of election by a non-defaulting Department Store to make such purchase, to join with the non-defaulting Department Store which elected to make such purchase in purchasing from the defaulting Department Store, the defaulting Department Store Site, together with the Facilities thereon to the extent then completed, for the Buy Back Price. If more than one non-defaulting Department Store shall give such notice, the purchasing Department Store(s) shall take title to the defaulting Department Store's Site, as tenants in common, with each purchasing party acquiring a ½ or 1/3 undivided interest, as the case may be, in the defaulting Department Store's Site and Facilities. The selling and purchasing parties shall be entitled to inspect and audit each other's books and records at reasonable times in order to verify the computation of the Buy Back Price under this Section, which books and records shall be retained by such parties, at their respective offices set forth at the head of this Agreement (or at another location within the continental United States) at least until a date six (6) years from the date hereof.

13A.2 The closing of title and delivery of the deed under Section 13A.1 shall take place, at such place as the Developer and/or the purchasing Department Store(s) shall designate in the general area in which the Entire Premises is located, sixty (60) days after the giving of such notice of election and conveyance shall be by Limited (Special) Warranty Deed.

13A.3 If any Department Store's Site shall be purchased in accordance with clauses (a) or (b) of Section 13A.1, at the closing of title, the defaulting Department Store shall tender to the purchaser executed assignments of all contracts and agreements made by such defaulting Department Store providing for or relating to the construction of its Facilities, together with all plans, layouts and engineering data prepared in connection therewith and all licenses and permits issued in connection therewith. Any of the contracts and agreements referred to in the preceding sentence, of which the purchaser shall not accept an assignment or which the purchaser shall not have previously approved following request therefor, shall, upon notice to such effect given by the purchaser to the other party thereto, ipso facto, be terminated and of not further force and effect as between such party and the purchaser nor shall the same in any way thereafter be deemed to affect or be a charge on the Entire Premises. Conveyance by the defaulting Department Store to the purchaser shall be by Limited (Special) Warranty Deed and the title shall be free and clear of all liens, charges and encumbrances other than those agreements, any easements for public utilities which the defaulting Department Store shall have granted in the reasonable exercise of its discretion in connection with the development of the Shopping Center, the lien of current real estate taxes (to be prorated as of the closing date) not yet due and payable, and any dedication for public use which such defaulting Department Store shall have theretofore made to any governmental authority in the reasonable exercise of its discretion in connection with the development of the Shopping Center. Following the giving of any such notice by the Developer or any such non-defaulting Department Store to the defaulting Department Store, as reflected in the first sentence of Section 13A.1, such defaulting Department Store shall not enter into any further contracts or agreements without the prior consent of the purchasing party or parties, as the case may be; provided, however, that if none of Developer and the non-defaulting Department Stores purchase the defaulting Department Store's Site within eight

VOL 7451 PAGE 679

(8) months after the giving of such notice, this restriction shall lapse at the expiration of the said eight (8) month period.

13A.4 This Agreement shall terminate on the closing of title as to such defaulting Department Store.

13A.5 Anything to the contrary herein notwithstanding, it is understood and agreed that the provisions of this Section 13A shall in no way apply (i) to any Department Store whose performance is fully guaranteed under this Agreement and/or (ii) after the date of substantial completion of the Department Store's Main Store Building insofar as such Department Store is concerned and/or (iii) prior to January 31, 1978.

VOL 7451 PAGE 680

Section 14 - Operating Covenants of Developer.

14.1 Provided at least two (2) Department Stores shall not be in default under its operating covenant set forth in Section 15, Developer shall, for a period of fifteen (15) years following the Opening Date and for so long thereafter as at least sixty (60%) per cent of the Floor Area of at least two (2) of the Department Store Main Store Buildings shall be occupied for retail purposes, continually operate the Shopping Center under the name "Windsor Park Mall Shopping Center", in a manner consistent with the best standards of regional shopping center practice, and shall use its best efforts to keep all store space in the Mall Store Buildings leased to the end that the Shopping Center will be utilized only for (i) retail purposes, and (ii) service establishments, such as banks, offices, etc., not exceeding in the aggregate fifteen (15%) per cent of the Floor Area of the Mall Store Buildings. Developer shall not lease or enter into any occupancy agreement permitting the use and occupancy of any portion of a Mall Store Building within seventy-five (75') feet from the Main Store Building entrance of a Department Store on the Air Conditioned Mall as a luncheonette or fast-food facility, or any other facility selling food for off-premises consumption, without the consent of the applicable Department Store.

14.2 No portion of the Mall Store Buildings on the Developer Site shall be used for any purpose other than the sale of goods, wares, merchandise, food, beverages and services to the public at retail and as set forth in clause (ii) of the last sentence of Section 14.1 other than such portions thereof as it may be reasonably necessary to devote to office and storage areas in connection with the operation of the Shopping Center.

14.3 There shall not be constructed on the Developer Site, without the prior approval of the Department Stores (i) any facilities for the parking of motor vehicles other than at ground level unless such be shown therefor on the Plot Plan and Design Plan, (ii) any buildings or structures (including, but not limited to, kiosks) not shown on the Plot Plan or Design Plan
and/or in the Reserved Area shown on the Plot

Plan and Design Plan, (iii) any building or structure in excess of two (2) stories or forty (40') feet in height (except in such locations, if any, where a structure of a greater height is expressly permitted as indicated on the Plot Plan or Design Plan, provided the height limitation, if any, shown thereon for such location, is not exceeded), (iv) any kiosk which exceeds nine (9') feet in total height (including signs) or exceeds two hundred (200) square feet in area or exceeds dimensions of ten (10') feet in width by twenty (20') feet in length or which is used as a food and/or beverage dispensing facility or for a purpose causing obnoxious odors or untidiness or whose location is not first approved by any Department Store whose Site is situated less than one hundred fifty (150') feet from the proposed location of any such kiosks, or (v) any improvements, or replacements of, or alterations or additions to, existing improvements, which do not conform in general architectural treatment (including the appearance of construction material used) to the other portions of the Shopping Center or, in the case of any replacement, to the improvement which is being replaced.

14.4 No selling activities shall be conducted on or within the Common Facilities of the Developer Site or merchandise displayed thereon, except in connection with such philanthropic, public, quasi-public or promotional activities which shall be authorized by the "Merchants Association" and which shall not be conducted within one hundred fifty (150') feet of any Department Store's Main Store Building and/or Additional Building without the consent of such Department Store.

Section 15 - Operating Covenants of the Department Stores.

15.1 Provided (i) Developer shall not be in default under its operating covenant set forth in Section 14, (ii) Ward, DDSI and Joske shall not be in default under their respective operating covenants set forth in Sections 15.2, 15.3 and 15.4 respectively, and (iii) tenants or operators occupying at least 65% of the Floor Area of the Mall Store Buildings (exclusive of any theatre) shall be conducting business, Penney shall, for a period of fifteen (15) years following the opening of business in the Penney Main Store Building continuously operate or cause to be continuously operated a retail department store in the Penney Main Store Building containing a Floor Area at least equal to that specified in Section 9.1(a) under a trade name which includes the word "Penney" or "Penney's" or under such other trade name as referred to in Section 15.5.

15.2 Provided (i) Developer shall not be in default under its operating covenant set forth in Section 14, (ii) Penney, DDSI and Joske shall not be in default under their respective operating covenants set forth in Sections 15.1, 15.3 and 15.4 respectively and (ii) tenants or operators occupying at least 65% of the Floor Area of the Mall Store Buildings (exclusive of any theatre) shall be conducting business, Ward shall, for a period of fifteen (15) years following the opening of business in the Ward Main Store Building continuously operate or cause to be continuously operated a retail department store in the Ward Main Store Building containing a Floor Area at least equal to that

VOL 7451 PAGE 681

specified in Section 9.3(a) under a trade name which includes the word or words "Ward" or "Montgomery Ward" or under such other trade name as referred to in Section 15.5.

15.3 Provided (i) Developer shall not be in default under its operating covenant set forth in Section 14, (ii) Penney, Ward and Joske shall not be in default under their respective operating covenants set forth in Sections 15.1, 15.2 and 15.4 respectively, and (iii) tenants or operators occupying more than 65% of the Floor Area of the Mall Store Buildings (exclusive of any theatre) shall be conducting business, DDSI shall, for a period of fifteen (15) years following its opening for business in the Dillard Store Building, continuously operate or cause to be operated therein a retail department store in the Dillard Store Building containing a Floor Area at least equal to that specified in Section 9.5(a) under a trade name including the word "Dillard" or under such other trade name as referred to in Section 15.5.

VOL 7451 PAGE 682

15.4 Provided (i) Developer shall not be in default under its operating covenant set forth in Section 14, (ii) Penney,Ward and DDSI shall not be in default under their respective operating covenants set forth in Sections 15.1, 15.2 and 15.3 respectively, and (iii) tenants or operators occupying more than 65% of the Floor Area of the Mall Store Buildings (exclusive of any theatre) shall be conducting business, Joske shall, for a period of fifteen (15) years following its opening for business in the Joske Main Store Building, continuously operate or cause to be operated therein a retail department store under a trade name which includes the word "Joske" or under such other trade name as referred to in Section 15.5.

15.5 It is understood that the Department Stores shall be in compliance with their operating covenants if, in lieu of the respective trade names set forth in Sections 15.1, 15.2, 15.3 and 15.4, they respectively operate, during the periods referred to in said Sections, under such other trade names as they may respectively be currently operating the majority of their respective like retail department stores in the State of Texas; provided, however, that insofar as Joske is concerned, the words "San Antonio Metropolitan Area" shall be substituted for the words "State of Texas".

15.6 Nothing herein contained shall be deemed in any way to regulate the manner of operation of the business being conducted on each Department Store's Site or the hours or days of such operation.

15.7 Notwithstanding anything to the contrary herein contained, each Department Store may:

(i) lease portions of its Store Building(s) or license departments thereof or grant concessions to other parties, and

(ii) lease or sell its Site to any parent company who owns all of the outstanding shares of such Department Store or to any corporation which may succeed to the business of such Department Store or such parent company in the State in which the Entire Premises is situated or to any corporation which may,

as the result of reorganization, merger, consolidation or sale of stock or assets, succeed to such business, and in either such case, such Department Store shall be released from all further obligations under this Agreement if such lease or sale is to a corporation which acquires all or substantially all of its assets and which, by written instrument in recordable form, expressly assumes all of its obligations hereunder, and

(iii) mortgage its Site and/or sell and leaseback or lease and subleaseback its Site and, in connection with any such transaction, assign its interest in this Agreement. If any such mortgage is foreclosed or a deed delivered in lieu of foreclosure, or if any Department Store shall have entered into a sale and leaseback or a lease and subleaseback transaction involving its Site under which any such Department Store or any parent company who owns all of the outstanding shares of such Department Store is the lessee or sublessee thereunder and such lessee or sublessee shall be deprived of possession of such Site by reason of its failure to comply with the terms of such leaseback or subleaseback, anyone who has acquired, or shall thereafter acquire, title to such Site or a leasehold estate therein shall hold the same free of any requirement that a retail department store be operated on such Site, as set forth in Sections 15.1, 15.2, 15.3 and 15.4 respectively, but such Department Store shall not in such case, be released from its obligations under said Sections or from any liability for damages arising out of the breach by such Department Store of any such obligation, but during term of operating covenant, the Main Store Building of the Department Stores may only be occupied for retail purposes.

15.8 It is understood, however, that in computing the percentages referred to in clause (iii) of Sections 15.1, 15.2, 15.3 and 15.4 hereof, Floor Area which is vacant by reason of the default of tenant or operator who occupied same shall only be considered vacant if it shall have been so vacant for a period in excess of six (6) months.

Section 16 - Parking Ratio.

Each party shall, at all times, maintain on its Site a sufficient number of car spaces so that at any given time the ratio of car spaces (of the character and size shown on the Plot Plan) to Floor Area will not be less than specified in Section 8.1(d) in the case of Developer; 9.1(c) in the case of Penney; 9.3(c) in the case of Ward; 9.5(b) in the case of Dillard; and 9.6A(b) in the case of Allied; except to the extent that such ratio may be reduced as a result of a taking in condemnation not resulting in the termination of this Agreement.

It is understood and agreed that wherever in this Agreement the term "Parking Area" is utilized, same shall be deemed to include, without limitation, the parking deck (the two-level Parking Area) which is shown on the Plot Plan.

VOL 7451 PAGE 683

Section 17 - Temporary Cessation of Business.

Any temporary cessation of business by any party occasioned by the making of repairs, alterations or renovations or by any Unavoidable Delay or any temporary cessation of business not in excess of three (3) months, shall not constitute a breach on the part of the party so ceasing business of its covenant to operate, as provided in Section 14 or Section 15, as the case may be.

VOL 7451 PAGE 684

Section 18 - Sign Criteria.

All signs erected or permitted to be erected by Developer on its Site shall conform to the Sign Criteria (Exhibit "H").

Section 19 - Common Facilities and Reciprocal Easements.

19.1 The term "Common Facilities" as used herein shall mean the following portions of the Shopping Center:

(a) Developer Parking Area and the Department store Parking Areas,

(b) All vehicular roadways providing access to and across the Developer and Department Store Parking Areas,

(c) All sidewalks, walkways, aisles, tunnels, and open malls providing pedestrian access to and across the Developer and the Department Store Sites,

(d) The Air Conditioned Mall,

(e) Common service areas,

(f) Landscaped and planted areas (including, but not limited to, those which may have been initially installed by the department Stores), and

(g) The fire corridors referred to in Section 8.1(c).

19.2 Each of the parties hereto hereby grants to each of the other parties hereto and to their respective tenants, subtenants, concessionaires and licensees and the respective officers, employees, agents, customers and invitees of each, for the benefit of each grantee's Site, the non-exclusive right, privilege and easement for the term of this Agreement to use the Common Facilities portions of the grantor's Site for the respective purposes for which the Common Facilities are designed, in common with the grantor and the other tenants, subtenants, concessionaires and licensees of the Shopping Center Site and the respective officers, employees, agents and invitees of each, without payment of any fee or other charge being made therefor.

19.3 The parties agree that no barricade, fence, shrub or other divider shall be constructed between the Sites of the parties hereto (except as may be shown on the Plot Plan and/or Design Plan), and the parties agree that they will do nothing to prohibit or discourage the free and uninterrupted flow of pedestrian and vehicular traffic throughout the Entire Premises on the areas shown therefor in the Plot Plan, provided that each party hereto shall have the right,

at least once in each calendar year to erect barriers or chains for the purpose of blocking off access to the Common Facilities on its Site in order to avoid the possibility of dedicating the same for public use or creating prescriptive rights therein, such barriers or chains shall be erected for such purposes, if possible, at a time or upon a day, when the Shopping Center is not open for business. Except as provided above and except to the extent shown on the Plot Plan and/or Design Plan, no curbs, fences, walls, planters, guard rails or other obstruction shall be erected between the parties' Sites if same would in any way interfere with the free flow of vehicular and pedestrian traffic.

19.4 The Developer shall promulgate rules and regulations with respect to the use of the Common Facilities which shall be acceptable to the Department Stores.

19.5 The Common Facilities shall be used only for the purposes for which they are constructed and designed.

19.6 No buildings or other structures may be erected in Parking Areas except (i) subject to the provisions of Section 9.8 hereof within Permissible Building Lines, if any, shown on the Plot Plan; (ii) as provided in Section 27; and (iii) the parking deck shown on the Plot Plan.

Section 20 - Attachment of Air Conditioned Mall to the Department Store Store Buildings.

20.1 If the Plot Plan and Design Plan shall show the Air Conditioned Mall as abutting one side of any Department Store's Main Store Building, Developer shall have the right (after approval of the plans for attachment by any such Department Store) to attach the Air Conditioned Mall to any such Department Store's Main Store Building, without any obligation by Developer to pay such Department Store any amount for the right to so attach the Air Conditioned Mall and without any implied obligation by any such Department Store to contribute to the payment of the cost of constructing and equipping the Air Conditioned Mall, as aforesaid. Developer shall repair, at its sole expense, any damage to the Department Stores' Facilities caused by Developer in making or maintaining said attachment and Developer shall indemnify and hold each Department Store harmless from any and all claims, liability, cost and expense whether in connection with personal injury, property damage or otherwise, which result or arise out of the making or maintenance of such attachment. Notwithstanding the foregoing, Developer shall not have the right to utilize any portion of such Department Store's Main Store Building for load bearing capacity without the prior consent of such Department Store, and if such consent is given, Developer shall reimburse such Department Store for all extra expense incurred by reason thereof or a reasonable allocation of joint cost, if any. If, however, the roof of the Air Conditioned Mall shall not be designed to be supported by the adjacent wall of a Department Store Main Store Building, but rather by independent columns, the location of such columns, to the extent that they are adjacent to the wall of such Department Store Main Store Building, shall be subject to the prior approval of such Department Store, which approval shall not be unreasonably withheld.

VOL 7451 PAGE 685

20.2 Each party hereby grants to the other such easements to install and maintain such footings and underground supports along their respective common property lines, at locations mutually acceptable, extending not more than six (6') feet under the servient tenement, as shall be necessary in connection with the construction by each party of its Facilities. While it is the intention of the parties to confine their improvements to the limits of their respective Sites, it is recognized that this result is not always achieved in a multi-ownership shopping center development. Accordingly, each party grants to the other an easement permitting the maintenance of canopies, roofs, building and other overhangs, awnings, alarm bells, utility vaults, staircases, exterior light fixtures, signs, pillars and other like projections and encroachments over and across the grantor's Site, to the extent that such projections and encroachments shall exist after completion of all construction or reconstruction (if any part is damaged or destroyed and then rebuilt). Developer hereby approves of the construction of the store front and/or building wall of any Department Store Main Store Building upon the Developer Site, but in no event shall any such store front and/or building wall extend more than six (6') feet beyond such Department Store's Site line. It is understood that the provisions of this Section 20.2 shall survive the termination of this Agreement and shall continue thereafter so long as the Department Store Main Store Building (or any replacement thereof constructed during the term of this Agreement) stands.

VOL 7451 PAGE 686

20.3 If the Plot Plan and Design Plan show a portion of the Air Conditioned Mall as traversing a portion of any of the Department Store Sites for the purpose of constructing and operating same, the Department Store in question hereby grants to Developer an easement for so long as the Department Store Main Store Building in question stands permitting the construction and maintenance of the Air Conditioned Mall on such portion of the Department Store Site or Sites; provided, however, that any such encroachment shall not extend more than six (6') feet beyond the Developer's Site line. Developer shall indemnify and hold the Department Store or Stores harmless from any and all claims, liability, cost and expense whether in connection with personal injury, property damage or otherwise, which result or arise out of such construction or maintenance.

Section 21 - Employee Parking.

The parties hereto shall require that their, and their tenants' and concessionaires', employees and agents not part their vehicles inthe Parking Areas on their respective Sites other than in such portions thereof as may be specifically designated upon the Plot Plan as areas for employee parking or in such portions thereof as may from time to time be designated for such purpose by separate agreement between the parties hereto.

Section 22 - Utility Easements.

Each of the parties hereto hereby expressly grants to each of the other parties hereto for the benefit of each grantee's Site, the perpetual (subject to relocation as hereinafter set forth) non-exclusive right and easement to install, maintain, repair and replace utility facilities, such as water, gas, electric and telephone lines and storm and sanitary sewers, underground and within the grantor's Site at the places shown for such utility facilities on the Design Plan or at such places as the same may ultimately be installed after completion of the Off-Site and On-Site Improvements. It is

understood that each party shall execute such instruments granting easements to other parties and/or to Utility Companies as may be necessary and appropriate. Any party hereto upon whose Site any such utility facilities shall have been installed shall have the right, upon sixty (60) days prior notice to the other parties, at any time or from time to time, to move and relocate such facility to such place as it shall designate; provided, however, that such relocation shall be made at the sole cost and expense of the party upon whose Site any such utility facility shall have been installed and that such relocation or relocated facility shall not increase the maintenance obligations of grantee, if any; shall not interfere with, interrupt (unless momentarily necessary at the time service is initially transferred) or increase the cost of any other party's utility service, or unreasonably interfere with the conduct or operation of its business. The final size of the easement areas within which any such utility facility is installed shall, in each case, be adequate, in the judgment of the Project Architect, to permit the exercise of the activity in question in connection therewith.

Section 23 - Maintenance and Lighting.

23.1 Developer shall, at its sole cost and expense, keep the exterior and interior of the entire Air Conditioned Mall in a good and safe state of repair and in a clean, orderly and secure (both personnel and mechanical) condition, notwithstanding the fact that a portion of same may be constructed on one or more of the Department Store Sites. Except as above or herein elsewhere provided, each party shall, at its sole cost and expense, maintain its Site and the Facilities thereon, in good order and condition, which obligation shall include, but shall not be limited to, the following specific items of maintenance and upkeep:

(a) Keeping and maintaining the exterior of all buildings and all sidewalks, walkways, roadways and parking surfaces in a good, safe and clean condition;

(b) Removing promptly, to the extent reasonably practicable, snow, ice, surface water and debris;

(c) Keeping all directional signs and pavement signs and striping in the Common Facilities, distinct and legible;

(d) Repairing, replacing and renewing lighting in the Common Facilities as may be necessary;

(e) Caring for and replanting all landscaped and planted areas;

(f) Maintaining and repairing, as necessary, any utility line traversing its Site, the cost of which repair or maintenance shall be borne solely by the party serviced thereby if only one party, or, if more than one party is serviced thereby, by each party in the proportion which its Floor Area bears to the total Floor Area of all parties serviced thereby; and

(g) Mechanical security as may be required by any one or more of the Department Stores for the Common Facilities on its Site.

VOL 7451 PAGE 687

It is understood that the provisions of this Section 23.1 insofar as clause (f) is concerned shall survive the termination of this Agreement.

23.2 During any period when any two (2) Department Store Main Store Buildings are open for business or when any one (1) Department Store Main Store Building and occupants of seventy-five (75%) per cent or more of the aggregate Floor Area of the Mall Store Buildings are open for business, and for reasonable periods after such business hours, Developer will provide adequate heat, ventilation and air conditioning for the Air Conditioned Mall and will maintain temperatures and conditions throughout said Mall in accordance with the standards prescribed therefor in Section 8.1 and each party will, at its own expense, keep all Common Facilities on its respective Site well lighted, with an intensity for Parking Areas of not less than one and a half (1½) foot candles minimum maintained throughout at thirty (30") inches above the finished grade; provided, however, that at all times after a time which is one (1) hour after the later of (i) the closing to the public for business of all the Department Store Main Store Buildings or (ii) the closing to the public for business of the Department Store Additional Buildings and at all night time hours thereafter until daylight of the day on which the Department Store Main Store Buildings or the Department Store Additional Buildings again open to the public for business, the illumination for the Parking Areas shall be provided by not less than twenty-five (25%) per cent of the number of lighting units installed in the Parking Area.

23.3 Each party shall design and operate its air conditioning, heating and ventilating equipment so as not to unduly drain heat, ventilation or air conditioning from the Air Conditioned Mall or from premises located on any other party's Site, as the case may be, irrespective of whether one or more of the parties are open for business and the other(s) are closed. Any dispute between Developer and any other Department Store as to whether either party is properly performing under this Section 23.3 shall be determined by arbitration.

23.4 Until the termination date of this Agreement, Developer covenants and agrees to undertake the obligation to perform all of the maintenance specified in Section 23.1 to the extent that it relates to the Common Facilities of the Shopping Center and the Department Stores will share in the cost thereof as provided in Section 26. (It is understood that insofar as the exterior portions of the respective parties' buildings are concerned, each party shall be responsible for the maintenance of its own buildings.) Each Department Store may, however, upon the giving of written notice to the Developer not less than ninety (90) days prior to the beginning of any calendar year, elect to keep, maintain and operate the Common Facilities on its Site in accordance with the provisions set forth in Section 23.1 commencing with the calendar year following the giving of such notice and, in the event of such election and except as hereinbelow otherwise provided, the party so electing shall no longer be required to share in the cost thereof as set forth in Section 26 commencing with such calendar year. Thereafter, each such Department Store may, upon the giving of written notice to the Developer not less than ninety (90) days prior to the beginning of any calendar year, elect to return to and require the Developer to keep, maintain and operate the

VOL 7451 PAGE 688

Common Facilities on its Site in accordance with the provisions set forth in Section 23.1 commencing with the calendar year following the giving of such notice and, in the event of such election, the Department Store so electing shall be required to share in the cost thereof as set forth in Section 26.

23.5 If, after the expiration of its operating covenant, any party's Site shall no longer be devoted to retail purposes, such party shall not, for so long as its Site is not devoted to retail purposes, be obligated to maintain its Site, as provided in Section 23.1, but it shall be responsible to retain for parking such portion of its Parking Area as shall be necessary to provide a sufficient number of parking spaces so as to comply with the zoning ordinance of the municipality where the Entire Premises is situated for the use, if any, then being made of its Site. If, in such a case, any of the other parties shall desire to retain for parking a greater portion of such party's Parking Area, they shall have the right to maintain such greater portion without expense to such party.

23.6 Adequate uniformed security personnel shall be provided by the Developer in the Air Conditioned Mall and in the other interior portions of the Developer Site at the sole cost and expense of the Developer and by each of the parties to the extent desired by it for the exterior Common Facilities on the respective parties' Sites; provided, however, that any two (2) or more of the Department Stores may elect to obtain common security personnel for the exterior Common Facilities on their Sites and the Developer Site in which event the costs thereof shall be shared in proportion to the respective Floor Areas of the Department Stores (so electing) and the Developer (except (with respect to the respective portions) as may be otherwise set forth in the Supplemental Agreements). It is understood, however, that upon the election of all of the Department Stores, the costs of common security personnel for the exterior Common Facilities shall be defrayed through the Merchants Association on the basis of each party's respective proportionate Floor Area.

Section 24 - Merchants' Association.

24.1 In the event that there is now in existence, or there shall hereafter be formed, an association of the tenants and occupants of the Shopping Center for the purpose of developing a joint promotional and public relations program ("Merchants' Association"), and Developer and the tenants and occupants of not less than 90% of the Floor Area of the Mall Store Buildings remain members thereof pursuant to provisions of their leases or occupancy agreements requiring such membership for the respective terms thereof, and requiring them to pay a fair and proportionate share of the expenses of the Merchants' Association in accordance with its by-laws, and the other Department Stores shall remain members thereof and shall make the annual contributions thereto in the amounts set forth in their respective Supplemental Agreements provided that Developer shall make an annual contribution thereto in an amount equal to twenty-five (25%) per cent of the aggregate annual contribution required to be made by all the other members thereof and that the requirements of Section 24.2 shall be observed, each Department Store shall become a member thereof and

VOL 7451 PAGE 689

remain so for at least five (5) years commencing with the date it opens its Main Store Building for business, and shall, during such period, make the annual contribution thereto in the amount set forth in its respective Supplemental Agreement.

24.2 The by-laws of the Merchants' Association shall contain no provision which would regulate, or empower the Merchants' Association to regulate, the manner of operation of the Department Stores' business or the days or hours the Department Stores will be open for business.

24.3 If any Department Store shall not be the corporation actually conducting business on its Site, such Department Store will cause such corporation to so become a member of the Merchants' Association.

VOL 7451 PAGE 690

Section 25 - Air Conditioned Mall Expenses.

Commencing with the date it opens its Main Store Building for business, for the duration of its operating covenant and for so long thereafter as it shall maintain at least one (1) entrance to the Air Conditioned Mall, each Department Store shall pay to Developer the annual amount set forth in its respective Supplemental Agreement as its contribution toward the expenses of operating and maintaining the Air Conditioned Mall. Such annual amount shall be paid in monthly installments on or before the tenth day of each calendar month.

Section 26 - Common Facilities Expenses.

If Developer shall have undertaken the maintenance of all Common Facilities of the Shopping Center as provided in Section 23.4, each Department Store shall, commencing with its opening date, pay to Developer a portion of the Developer's expenses in respect of the Common Facilities (excluding the Air Conditioned Mall) of the Shopping Center in the annual amount as set forth in its respective Supplemental Agreement. Said annual amount, if any, shall be paid in monthly installments on or before the tenth day of each calendar month.

It is understood, however, that Developer's responsibility for caring for and replanting all landscaped and planted areas as contemplated by Section 23.4 shall not include replacement replanting of landscaped and planted areas situated between the building walls and the sidewalk curb lines on any Department Store Site which may be requested by such Department Store.

Section 27 - Eminent Domain.

27.1 If all or any substantial portion of (i) any Department Store's Main Store Building or (ii) the Mall Store Buildings, or the Air Conditioned Mall on the Developer Site, shall be taken by condemnation or eminent domain or by public authority pursuant to the threat of condemnation or eminent domain, so that it shall not be feasible to restore same to complete architectural units, and the party affected thereby shall not notify the other parties within sixty (60) days of such taking that it intends to so restore, then, in the case of (i) above, such Department Store (whose Main Store Building is so affected) shall have the option to exclude its Site from the operation and effect of this Agree-

ment, and in the case of (ii) above, any Department Store shall then have the option to exclude its Site from the operation and effect of this Agreement, such exclusion to be signified by notice given to the other parties within ninety (90) days after such taking, and such exclusion to then take effect automatically sixty (60) days following the giving of such notice. If all or any portion of any Department Store's Additional Building shall be taken so as to render same unfit for an automotive service center, in the good faith judgment of such Department Store, reasonably exercised, then such Department Store shall have the right at its sole option to relocate same elsewhere on such Department Store's Site at a location reasonably satisfactory to such Department Store.

27.2 If all, or any substantial portion, of any party's Parking Area shall be taken by condemnation or eminent domain or by public authority pursuant to the threat of condemnation or eminent domain so that after such taking, the parking ratio of such Area shall be reduced to less than seventy-five (75%) per cent of the ratio specified in Section 8.1(d), 9.1(c), 9.3(c), 9.5(b) or 9.6A(b), as the case may be, and the party affected thereby shall not notify the other parties within sixty (60) days of such taking that it intends to provide additional parking facilities in the manner set forth in Section 27.4(b) so as to comply with the specified ratio for its Site, then such Department Store may elect to exclude its Site from the operation and effect of this Agreement. In the case of any such taking which shall have the effect of (i) reducing the parking ratio of the Developer Parking Area to less than fifty (50%) per cent of the ratio specified in Section 8.1(d), or (ii) the Shopping Center Site, overall to less than seventy-five (75%) per cent of the overall ratio for the entire Shopping Center, any Department Store shall also have the right to exclude its Site from the operation and effect of this Agreement, such exclusion to be signified by notice given to the other parties within ninety (90) days after such taking, and such exclusion to then take effect automatically sixty (60) days following the giving of such notice.

27.3 In the event any party's Site shall be excluded herefrom, as in this Section provided, the parties shall execute and exchange an instrument in recordable form evidencing such exclusion.

27.4 In the event less than all of the Department Stores' Sites are excluded herefrom, each party still bound by this Agreement shall apply any award first, before devoting such award to any other purposes, as follows:

(a) In the case of a taking affecting any building(s), to the restoration of such building(s) to a complete architectural and structural unit(s) as similar as is reasonably possible in design, character and quality to the original building(s) and to the replacement of any totally condemned building(s) insofar as is reasonably possible, with a building(s) similar in design, character and quality to the building(s) so taken.

(b) In the case of a taking affecting a Parking Area, to the replacement of the car spaces lost by such taking with double decking parking facilities at

VOL 7451 PAGE 691

a location acceptable to the Department Stores or toward the acquisition of contiguous land, suitable in the Department Stores' judgment, for parking purposes.

VOL 7451 PAGE 692

27.5 Any disputes under this Section 27 between Developer and any Department Store shall be determined by arbitration.

27.6 Any award in excess of $25,000 payable to Developer shall be payable to a bank or trust company satisfactory to the parties hereto (an institutional first mortgagee of the Developer Site having a net worth of at least $25,000,000 being satisfactory) to be held in trust and distributed in accordance with Section 27.4.

27.7 Any Department Store which pursuant to Section 27.1 or the first sentence of Section 27.2 shall have excluded its Site from the operation and effect of this Agreement, as aforesaid, will not thereafter, during the remaining term of this Agreement, for so long as the Developer Site is being operated as a regional shopping center and one Department Store Site is being utilized for retail purposes, use its Site for heavy industry, a slaughter house, a sewerage plant, any use emitting obnoxious odors or any other similar use, which, in the reasonably exercised judgment of such Department Store, is incompatible with the adjacent operation of a first class regional shopping center on the Developer Site. If any Department Store which shall have excluded its Site from the operation and effect of this Agreement shall, at any time thereafter, conduct business on its Site of the same or substantially the same character as that being conducted prior to the event giving rise to such exclusion, such exclusion shall ipso facto be deemed rescinded and such Department Store's Site shall again become subject to the operation and effect of this Agreement.

Section 28 - Insurance.

28.1 Each party shall keep the buildings and other structures on its Site insured against loss or damage by (i) fire and the perils commonly covered under the extended coverage endorsement in an amount not less than ninety (90%) per cent of the actual replacement cost of such buildings and other structures (excluding the cost of foundations, excavations and footings below the lowest basement floor) and (ii) the explosion or rupture of pressure vessels, if such buildings shall be heated by means of a central utility plant, in an amount not less than $100,000 per accident, such insurance to be written on a replacement cost basis.

No party shall be liable to any other party or to any insurance company insuring the other party for any loss or damage to any building or other structure which was or could have been covered by such insurance even though such loss or damage might have been occasioned by the negligence of such party, its agent or employees.

Any loss covered by such insurance shall be adjusted with the insured, and if the loss is in excess of $50,000 and neither the insured nor a corporation which has guaranteed

performance of the insured's obligations hereunder shall have a net worth of more than $20,000,000, the insurance proceeds shall be deposited in a bank or trust company satisfactory to each of the parties hereto to be held in trust and disbursed as the work of restoration progresses; if the loss does not exceed $50,000 or the insured or a corporation which has guaranteed performance of the insured's obligations hereunder shall have a net worth of $20,000,000 or more, the insurance proceeds shall be paid to the insured and applied by it toward the cost of restoration.

Such policies may be made payable to the holder of any first mortgage which is a lien upon the Site of the insured under a standard mortgagee clause, provided such mortgagee is a bank, trust company, insurance company, pension fund, retirement fund or other reputable institutional lender; provided that (i) with regard to the Developer Site, such mortgagee agrees that it will, in the event of loss, apply the proceeds in accordance with this Section, and (ii) with regard to any of the Department Store Sites, the Department Store in question agrees (if required by other provisions of this Agreement) to replace the premises, such insurance proceeds (having been paid to such mortgagee) notwithstanding.

28.2 Each party shall maintain a policy of comprehensive public liability insurance, naming itself as the insured, against claims on account of bodily injury and property damage incurred upon or about its Site, such insurance to be written with limits of not less than (i) $1,000,000 in respect of bodily injury to or death of any one person, (ii) $3,000,000 in respect of bodily injury to or death of any number of persons arising out of any one occurrence, and (iii) $500,000 per occurrence in respect of any instance of property damage.

28.3 Each party hereby indemnifies and agrees to save harmless the other parties from and against all claims, actions, damages, liability and expense in connection with bodily injury, death or property damage arising out of accidents occurring on any part of its Site occasioned wholly or in part by any act or omission of its employees, agents or contractors; excepting, however, as respects any person claiming the right to be indemnified hereunder, any such claims, actions, damages, liability and expense arising from or as a result of the act or omission of any person so claiming the right to be indemnified, or the employees, agents or contractors of such claiming person.

28.4 Each party shall deliver to the other parties certificates of the insurance required to be maintained under this Section 28 and evidence of the renewal of such insurance from time to time. Each certificate of insurance shall stipulate thereon that the insurance evidenced thereby shall not be materially reduced or cancelled unless ten (10) days prior written notice shall have been given by the insurer to the other parties.

28.5 Any Department Store having a net worth of $20,000,000 or more,or any Department Store having performance of its obligations hereunder guaranteed by a corporation having such a net worth, or the parent company of such Department Store required to cause such Department Store to perform hereunder having such a net worth, may carry any

VOL 7451 PAGE 693

insurance required to be maintained under this Section 28, either in whole or in part, (i) under any plan of self-insurance which such Department Store may have in effect, or (ii) under a "blanket policy" covering other properties of such party and its subsidiaries, controlling or affiliated corporations, provided that such policy or policies shall otherwise comply with the provisions of this Section 28, and such party shall, upon request, deliver to the other parties a written statement from the insurer thereunder specifying the minimum amount of the total insurance allocated to the property insured pursuant to the requirements of this Section 28.

28.6 As used in this Agreement, the term "net worth" shall mean the stockholder's or shareholder's equity as determined in accordance with sound accounting practices.

Section 29 - Damage or Destruction.

29.1 If the Facilities on any party's Site shall be damaged or destroyed by a casualty required to be insured against under this Agreement, the owner of such Site shall, at its own expense, promptly repair or rebuild same to as good condition as existed prior to such damage or destruction but no party shall be required to restore any building beyond the size initially required under Section 8.1, 9.1, 9.3, 9.5 or 9.6A, as the case may be.

29.2 Anything to the contrary herein notwithstanding, (i) if the Facilities on any Department Store's Site shall be damaged or destroyed by a casualty not required to be insured against under this Agreement, or (ii) if substantial damage or destruction shall have occurred to the Facilities on any Department Store's Site, at any time during the last two (2) years that such Department Store is required to operate pursuant to Section 15, or (iii) if damage or destruction shall have occurred to the Facilities on any Department Store's Site after the term of its operating covenant set forth in Section 15 and the owner of such Site shall not elect to repair or rebuild, then and in such event, such party shall clear away the ruins and leave the property in a clean, orderly and sightly condition. It is understood and agreed that if any Department Store elects not to repair or rebuild in accordance with the provisions of this Section, the support provisions of Section 20.1 hereof (by the adjacent wall of a Department Store Main Store Building) shall cease and terminate as of the date of damage or destruction.

29.3 Anything to the contrary herein notwithstanding, if the (i) Penney Additional Building or (ii) Ward Additional Building shall be damaged or destroyed and the owner of the Site on which such damaged or destroyed Additional Building is situated shall not elect to repair or rebuild, said owner shall clear away the ruins and leave the property in a clean, orderly and sightly condition.

Section 30 - Term of this Agreement.

30.1 Unless terminated sooner pursuant to the express provisions hereof or by subsequent mutual agreement of the parties hereto, this Agreement shall continue, the

obligations hereunder shall remain bindin, and the reciprocal easements in the Common Facilities shall remain effective from the date hereof until the Opening Date and thereafter for a period of forty (40) years; provided, however, that in the event this Agreement is terminated sooner pursuant to the express provisions hereof, the reciprocal easements in the Common Facilities (excepting the fire corridors which are referred to and governed by Section 8.1(c) shall continue in effect for a period ending on the earlier of (i) the date on which less than sixty-five (65%) per cent of land area of the Entire Premises and/or less than 740,000 square feet of Floor Area of the Facilities on the Entire Premises are operated for Shopping Center purposes or (ii) the date forty (40) years after the Opening Date.

30.2 The parties agree that any Department Store shall have (i) the option to renew the term of this Agreement as to its Site and the Developer Site for an additional period of five (5) years and, thereafter, (ii) six (6) separate options to so further renew the term of this Agreement for additional terms of five (5) years each. Any such option shall be exercised by the giving of notice to all parties at least one (1) year prior to the expiration of the term hereof, or the then renewal term, as the case may be; provided, however, that if only one Department Store shall give said notice, such Department Store shall have the right to revoke said notice at any time prior to the last six (6) months of the term hereof or the then renewal term, as the case may be. If all Department stores shall have given said notice, the term of this Agreement shall be deemed renewed as regards all parties and their respecttive Sites, and said renewal term shall be added to and become a part of the term of this Agreement (but shall not be considered a part of the initial term) and any reference in this Agreement to the "term of this Agreement" or the "term hereof" shall be deemed to include such renewal term.

30.3 Anything to the contrary herein notwithstanding, the utility easements referred to in Section 22 hereof shall be perpetual; subject, however, to the rights of relocation set forth in said Section.

Section 31 - Agreement Conditional.

31.1 This Agreement is conditional upon there being no laws, ordinances, rules, resolutions or regulations of any kind and/or nature whatsoever (including, without limitation, those concerning zoning, ecological, Environmental Protection Agency and/or other matters) in effect (i) at the time of recording of this Agreement, (ii) at the time of commencement of construction of the Developer Facilities and/or Department Store Facilities and/or (iii) upon completion by each of the Department Stores of the footings and underground supports for their respective Main Store Buildings and/or Additional Buildings, respectively, which would prevent the construction, reconstruction and/or use of same. If such laws, ordinances, rules, resolutions or regulations should be in existence at any of such times and the parties within a period of four (4) months after such time shall be unable to obtain appropriate relief from same so as to permit compliance with the terms of, and the

VOL 7451 PAGE 695

enjoyment of their rights under, this Agreement, any Department Store or Stores (irrespective of whether such Department Store or Stores or their Facilities are or are not immediately affected by laws, ordinances, rules, resolutions or regulations of the type referred to in the first sentence of this Section 31.1) may elect to terminate this Agreement as to it or them, as the case may be, and require the reconveyance of its or their Site or Sites, as the case may be, to Developer at a price equivalent to the purchase price therefor paid by it or them, as the case may be, plus all of its or their, as the case may be, costs and expenses theretofore incurred in connection with the acquisition of its or their Site or Sites, as the case may be, together with interest at a rate of eight (8%) per cent per annum on such purchase price, costs and expenses from the date paid by any such Department Store or Stores, as the case may be, until the date of payment or repayment by Developer. In the event any such Department Store or Stores, as the case may be, so elect to require reconveyance and purchase by Developer, the provisions of Sections 13.2 and 13.4 shall be applicable.

VOL 7451 PAGE 696

31.2 Developer covenants and warrants that as of the time of recording of this Agreement there are not in effect any laws, ordinances, rules, resolutions and/or regulations of the type referred to in Section 31.1 which would prevent construction, reconstruction and/or use of the Developer Facilities and/or Department Store Facilities.

Section 32 - Mechanic's Liens.

No party will permit any mechanic's, materialman's or similar lien to stand against any portion of the Entire Premises for any labor performed or material furnished in connection with any work performed or caused to be performed by such party. Any party may bond and contest the validity or amount of any such lien on its Site but upon final determination as to the validity and amount thereof, such party shall promptly discharge said lien. Developer shall indemnify and hold harmless the Department Stores against any mechanic's or materialman's liens filed against the Department Store Sites as a result of the Grading Work, Off-Site Improvements and/or On-Site Improvements. Anything to the contrary notwithstanding, nothing contained in this Section 32 shall be deemed in any way and/or manner whatsoever to derogate from the Developer's covenants and agreements set forth in Section 4A hereof.

Section 33 - Taxes and Other Charges.

33.1 Except as otherwise set forth in Section 5.3 hereof, each party shall, from and after the date of recording of this Agreement, promptly pay all real estate taxes, assessments, water charges, sewer rents and other like municipal charges (hereinafter collectively referred to as "Impositions") levied against its Site, the non-payment of which would give rise to a lien superior to any other party's rights under this Agreement. Any party may protest any such Imposition provided such protest does not result in a forfeiture of such party's interest in its Site.

33.2 If any party shall: (i) fail to pay an Imposition of the nature described in Section 33.1 and shall not be protesting it; or (ii) protest such an Imposition, and if in either of such events such party's Site is subject to forfeiture because of such non-payment or such protest being made without filing proper security or otherwise complying with the applicable procedures therefor, any other party hereto shall have the right but not the obligation to, on sixty (60) days notice to the other parties hereto, to pay the Imposition the non-payment of which could result in a forfeiture of a party's Site.

In such event the party whose Site was affected by such Imposition shall promptly reimburse the party who paid such Imposition to the appropriate taxing authority. The reimbursement shall be the equivalent of the amount of the Imposition and interest and penalties, if any, thereon so paid together with interest thereon computed at the rate of eight (8%) per cent per annum.

Section 34 - Unperformed Covenants of Developer.

If Developer shall fail to perform any of the covenants to be performed by Developer pursuant to this Agreement, or if Developer should fail to make any required payment hereunder, and Developer shall fail to cure such default within sixty (60) days after any Department Store affected thereby shall have served upon Developer and the other Department Stores notice of such failure (or if the default is of such character as reasonably to require more than sixty (60) days to cure and Developer shall fail to commence to cure the same within such period or shall fail to use reasonable diligence in curing such default thereafter) or if the failure of Developer relates to a matter which, in such Department Store's judgment reasonably exercised, is of an emergency nature and such failure shall remain uncured for a period of forty-eight (48) hours after such Department Store shall have served upon Developer notice of such failure, then such Department Store (or if more than one Department Store shall be so affected, the Department Store first serving such notice) may, at its option, and in its sole discretion as to the necessity therefor, perform any such covenant, or make any such payment as Developer's attorney-in-fact (such Department Store being hereby irrevocably appointed by Developer as Developer's attorney-in-fact for such purpose), and such Department Store by reason of so doing shall not be liable or responsible for any loss or damage thereby sustained by Developer or anyone holding under Developer. It is understood, however, that the Department Stores which shall not elect to serve as Developer's attorney-in-fact shall have no liability and/or responsibility by reason of the actions of the electing Department Store or Stores. In the case of a default by Developer affecting more than one Department Store, if the Department Store first serving such notice shall fail to commence performance of such covenant or make such payment within thirty (30) days after the expiration of the above specified period allowed Developer to cure such default, any other Department Store shall be entitled to cure Developer's default with the same

VOL 7451 PAGE 697

effect as though it had first served such notice. If any Department store so performs any of Developer's obligations hereunder, or if any Department Store shall sustain any damage by reason of the fact that any representations made by Developer in this Agreement shall be untrue, the full amount of the cost and expense entailed or the payment so made or the damage so sustained, as the case may be, shall immediately be owing by Developer to such Department Store, and Developer shall repay to such Department Store upon demand the full amount thereof with interest at the maximum legal rate thereon from the date of payment. If such repayment shall not be made within ten (10) days after such demand is made, such department Store shall have the right to deduct the amount thereof, together with interest as aforesaid, without liability of forfeiture, from any sums then due or thereafter becoming due from it to Developer hereunder and/or under its Supplemental Agreement and irrespective of who may own or have an interest in the Developer Site at the time such deductions are made, and until so paid or offset, the amount so owed such Department Store shall constitute a lien upon the Developer Site as of the date of such Department Store's demand for reimbursement thereof. Developer shall execute such instruments as such Department Store may request to permit the recordation of such lien, and Developer hereby irrevocably designates such Department Store as Developer's attorney-in-fact for such purpose. Such Department Store shall have the right to foreclose such lien in the manner provided by law and such lien shall be superior to any other lien and/or encumbrance granted by Developer on the Developer Site; provided, however, that such lien shall be subject and inferior to (i) the lien of any conventional first mortgage now or hereafter placed on the Developer Site as security for repayment of a loan made by an institutional lender to the extent of the amount of such lender's loan, and (ii) each lease of all or any part of the Developer Site which is superior to the lien of such first mortgage or as to which the holder of such first mortgage is required to recognize the rights of the lessee thereunder so long as such lessee is not in default thereunder.

The option given in this Section is for the sole protection of the Department Stores and its existence shall not release Developer from the obligation to perform the terms, provisions, covenants and conditions herein provided to be performed by Developer or deprive the Department Stores of any legal rights which they may have by reason of any such default by Developer.

Developer hereby grants to the Department Stores non-exclusive rights of entry and non-exclusive easements over and under any and all parts of the Developer Site (excluding the right to enter premises demised to or owned by others) for all purposes reasonably necessary to enable them (acting directly or through agents, contractors or subcontractors) so to perform any of the terms, provisions, covenants or conditions of this Agreement which Developer shall have failed to perform after notice to developer as set forth in the first sentence of this Section 34 and/or elsewhere in this Agreement and the time to cure has elapsed.

VOL 7451 PAGE 698

Section 35 - Ordinances.

Except as elsewhere in this Agreement set forth, and subject in any event to the provisions of Section 31, each party shall, at all times, both during and after the completion of construction of its Facilities, comply with all Federal, State, County and Municipal laws, ordinances, rules and regulations, with all regulations of the local Fire Insurance Rating organizations having jurisdiction or any other organization or board exercising similar functions, respecting the construction, maintenance and operation of its Facilities and with all requirements of (i) the Factory Mutual Engineering Division of Factory Mutual System insofar as the Developer's Facilities, the Penney Facilities, the Dillard Facilities, the Ward Facilities and the water mains (including water loop) on the Entire Premises are concerned and (ii) the Kemper Insurance Group insofar as the Joske Facilities and the water mains (including water loop) on the Entire Premises are concerned.

Section 36 - Estoppel Certificates.

Any party shall, from time to time (but not more frequently than once in any four (4) month period) upon not less than twenty (20) days notice from any other party, execute and deliver to such other party a certificate in recordable form stating that this Agreement is unmodified and in full force and effect or, if modified, that this Agreement is in full force and effect, as modified, and stating the modifications and stating whether or not, to the best of its knowledge, any other party is in default in any respect under this Agreement, and, if in default, specifying such default.

Section 37 - Alterations and Additions.

37.1 Each party shall have the right to make, at its own cost and expense, such alterations to its Facilities, not amounting to additions, as it may desire which are provided for on the Plot Plan or Design Plan or, if not so provided for, so long as the same will not (i) result in a condition inconsistent with the improvements as shown or provided for on the Plot Plan or Design Plan, (ii) impair the structural integrity and soundness of the Facility in question, (iii) result in a substantially different exterior appearance than existed before, or (iv) render performance of any covenant hereunder on the part of such party impossible.

37.2 Each party may erect additions to its Facilities, provided the same (i) if a horizontal expansion, (subject to the provisions of Section 9.8) be constructed within the Permissible Building Lines, (ii) is not prohibited by the express terms of this Agreement, (iii) will not substantially change the exterior appearance of the Facility in question, unless expressly provided for in this Agreement, the Plot Plan or the Design Plan, (iv) is substantially similar in design, character and quality to the basic structure of which it will form a part, and (v) will not result in a violation of the parking ratios hereinbefore set forth.

VOL 7451 PAGE 699

37.3 Specifically, the Department Stores may make the following additions to their Facilities:

Facilities for the sale of gasoline and other fuels at the location and/or locations shown therefore on the Plot Plan.

VOL 7451 PAGE 700

37.4 Notwithstanding anything to the contrary herein contained, no change, modification or alteration to any Common Facility shall be made which shall (i) change, modify or alter the Air Conditioned Mall, (ii) adversely affect the orderly flow of pedestrian and vehicular traffice in the shopping Center or render any Site less accessible to such traffic, or (iii) reduce the capacity of the Parking Area on the Site in question below the ratio specified in Section 8.1(d), 9.1(c), 9.3(c), 9.5(b) or 9.6A(b), as the case may be.

37.5 Except to the extent otherwise expressly provided for in this Agreement, there shall not be constructed on any party's Site, without the prior approval of each other party, (i) any facilities for the parking of motor vehicles other than at ground level in the locations shown therefor on the Plot Plan and Design Plan (it being specifically understood and agreed that decking of the Parking Area in the vicinity of the southeasterly corner of the Entire Premises is permitted as shown on the Plot Plan), (ii) any buildings or structures or additions thereto (subject to the provisions of Section 9.8) beyond Permissible Building Lines, or (iii) any improvements, or replacements of, or alterations to, existing improvements which do not conform in general architectural treatment (including the appearance of construction material used) to the other portions of the Shopping Center or, in the case of any replacement, to the improvement which shall be replaced. In view of the fact that the parties hereto have acquired their respective Sites and will be constructing improvements thereon of the sizes and in the locations therefor provided herein, and in anticipation of the fact that the Shopping Center will be improved and the Common Facilities laid out in the manner depicted on the Plot Plan, the covenants contained in clauses (i) and (ii) above shall be of essence of this Agreement and any breach of such covenants shall be deemed material.

37.6 For so long as a retail business is being conducted on both levels of its Main Store Building, each Department Store will maintain at least one entrance into the Air Conditioned Mall, on each of the upper level and lower level.

Section 38 - Arbitration.

38.1 Whenever any question, matter or dispute between Developer and any Department store is expressly made arbitrable by the terms of this Agreement, the provisions of this Section shall apply thereto. Within fifteen (15) days after the giving of notice by one party to the other that it desires arbitration, two (2) arbitrators shall be chosen, one by Developer and one by the Department Store,

and within ten (10) days thereafter, a third arbitrator shall be selected by the two thus chosen. If either party to the arbitration shall fail to make such choice within the time herein provided, or the then two arbitrators shall fail to choose a third arbitrator within the time herein provided, then the party not in default in selecting an arbitrator, or either party thereto, in the event that the two arbitrators so chosen shall have failed to select a third, may upon five (5) days notice to the other party, request the presiding judge of the District Court of the United States for the district in which the Entire Premises is located, acting in his private and non-judicial capacity (or a master selected by him and properly compensated by the parties involved in such arbitration) to choose an arbitrator or arbitrators to fill the vacancy or vacancies. Such judge may thereupon appoint an arbitrator or arbitrators, as the case may be, to complete the panel of three arbitrators. If such judge shall fail or refuse to make such appointment, the same shall be made in accordance with the prevailing provisions of the laws relating to arbitration of the State in which the Entire Premises is located.

38.2 Said three arbitrators, when duly appointed, shall investigate the facts, shall hold hearings and permit the parties to present evidence and arguments thereat, and they shall render a decision by majority vote within sixty (60) days after the date upon which the last arbitrator is appointed, which decision shall be final and binding on the parties hereto. Judgment upon the award rendered in such arbitration may be entered by any court having jurisdiction thereof. No party shall be considered in default hereunder during thependency of arbitration proceedings relating to such default. If the arbitrators shall fail to render a decision within said period of sixty (60) days, then any party to the arbitration shall have the right to institute such action or proceeding in such court as shall be appropriate in the circumstances. The arbitrators shall determine in what proportion the parties to the arbitration shall bear the cost of such arbitration, except that each party thereto shall pay the fees and expenses of the arbitrator appointed by or on behalf of it and one-half of the fees and expenses of the third arbitrator, if any. In determining any question, matter or dispute before them, the arbitrators shall apply the provisions of this Agreement without varying therefrom in any respect, and they shall not have the power to add to, modify or change any of the provisions of this Agreement.

Section 39 - No Termination of Agreement.

Except as herein expressly provided, no breach of this Agreement or default by any party shall entitle any other party to terminate or cancel this Agreement, and the sole remedy of the parties hereto against the party in default shall be by means of an injunction and/or an action for damages.

Section 40 - Covenants Running with the Land.

During the term of this Agreement and any valid extensions thereof (and thereafter as to the provisions set forth in Section 22 hereof), all the covenants, agreements,

VOL 7451 PAGE 701

conditions and restrictions set forth in this Agreement are intended to be and shall be construed as covenants running with the land, binding upon, inuring to the benefit of and enforceable by the parties hereto and all subsequent owners of their respective Sites or any parts thereof.

VOL 7451 PAGE 702

Section 41 - Independent Contractors.

Nothing contained in this Agreement shall be construed to make the parties hereto partners or joint venturers or to render any of said parties liable for the debts or obligations of any other, except as in this Agreement expressly provided.

Section 42 - Waivers.

No delay or omission by any party hereto in exercising any right or power accruing upon the non-compliance or failure of performance by any other party under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by any party hereto of any of the covenants, conditions or agreements hereto to be performed by any other party shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

Section 43 - Remedies Cumulative.

All rights, privileges and remedies afforded the parties by this Agreement shall be deemed cumulative and the exercise of any one of such remedies shall not be deemed to be a waiver of any other right, remedy or privilege provided for herein.

Section 44 - Modifications.

Any alteration, change or modification hereof, in order to become effective, shall be made by written instrument or endorsed hereon and, in each such instance, executed on behalf of each party hereto, as aforesaid.

Each party agrees to cooperate with the reasonable request of the other parties for any modification or amendment to this Agreement required by the requesting party's sale-leaseback purchaser and/or mortgagee, construction or permanent, provided:

(i) Such request is reasonable and customarily required by institutional lenders; and

(ii) will not adversely affect or diminish the rights of any party hereunder.

Section 45 - Applicable Law.

This Agreement shall be governed by, and construed in accordance with, the laws of the State in which the Entire Premises are situated.

Section 46 - Partial Invalidity.

If any provisions of this Agreement or the application thereof to any party or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 47 - Notices.

Every notice, demand, consent, approval or other document or instrument required or permitted to be served upon any of the parties hereto shall be in writing and shall be deemed to have been duly served on the day of mailing, and shall be sent by registered or certified United States Mail, postage prepaid, return receipt requested, addressed to the respective parties at the addresses stated below:

To Penney:

One copy addressed to:
J. C. Penney Properties, Inc.
c /o J. C. Penney Company, Inc.
Real Estate Department
1301 Avenue of the Americas
New York, New York 10019

An additional copy addressed as follows:
Until the Opening Date, to:
J. C. Penney Properties, Inc.
c/o J. C. Penney Company, Inc.
Real Estate Department
7616 L.B.J. Freeway, Suite 616
Dallas, Texas 75240

After the Opening Date,to:
Penney Main Store Building

To Ward:

One copy addressed to:
Montgomery Ward Development Corporation
Attention: Secretary
535 West Chicago Avenue
Chicago, Illinois 60607

An additional copy addressed as follows:
Montgomery Ward Development Corporation
Attention: Assistant Secretary
6200 St. John Avenue
Kansas City, Missouri 64123

To DDSI and Condev:
Dillard Department Stores, Inc.
P.O. Box 486
Little Rock, Arkansas 72203

VOL 7451 PAGE 703

To Alstores and Joske:

One copy addressed to: Alstores Realty Corporation
1114 Avenue of the Americas
New York, New York 10036

An additional copy addressed as follows: Allied Stores of Texas, Inc.
Alamo Square
P.O. Box 961
San Antonio, Texas 78294

To Developer: 1712 North Meridian Street
Indianapolis, Indiana 46202

VOL 7451 PAGE 704

Any party may change the place for serving of notices upon it, by ten (10) days prior written notice informing the other parties of the change in the address to which notices shall be sent.

Section 48 - Successors and Assigns.

This Agreement shall bind and inure to the benefit of the respective successors and assigns of the parties hereto.

Section 49 - Assignment, Transfer and Mortgage.

49.1 Except as provided for in Section 15.7, no sale by any party of all or any part of its Site or assignment of this Agreement shall be deemed to release such party from any of its obligations hereunder until after the termination of such party's operating covenant as set forth in Section 14 or 15, as the case may be; but if any party shall sell its entire Site, such party shall be released from all further liability arising under this Agreement in respect of any period after such sale or the termination of such party's operating covenant, whichever shall last occur. No sale by Developer of all or any part of the Developer Site prior to a date one (1) year after the Opening Date shall be deemed to release Developer from any of its obligations hereunder, but if Developer shall sell the entire Developer Site at any time after a date one (1) year after the Opening Date, Developer shall be released from all further obligations hereunder thereafter accruing, but shall remain liable for the performance of all obligations theretofore accrued; provided that all the department Stores shall have first approved such purchaser (which approval shall not be unreasonably withheld); and, further provided, that such purchaser shall have a net worth in excess of $5,000,000.00; shall be experienced in the operation of shopping centers; and shall be of good repute.

49.2 Notwithstanding anything to the contrary herein contained, if, in order to secure an indebtedness, any Department store shall (i) convey its Site and assign its interest under this Agreement in connection with a sale and leaseback or lease and subleaseback financing, and it or its parent corporation shall simultaneously become vested with a leasehold estate or similar possessory interest in its Site by virtue of a lease made by the grantee, or lessee, as the case may be, or (ii) shall convey its Site by

way of a deed of trust or mortgage and retain its possessory interest in its Site, then in neither of such events shall the assignee of this Agreement under such sale and leaseback or lease and subleaseback, or any subsequent owner of its Site, or the trustee, beneficiary or mortgagee under any such deed of trust or mortgage, be deemed to have assumed or be bound by any of such party's obligations hereunder for so long as such party or its parent corporation shall retain such possessory interest, and such obligations shall continue to remain solely those of such party or parent corporation, as the case may be, so long as such party or its parent corporation retains such possessory interest and performance by such party or its parent corporation of any act required to be performed under this Agreement by it or fulfillment of any condition of this Agreement by such party or its parent corporation, shall be deemed the performance of such act or the fulfillment of such condition by such assignee, lessee, subsequent owner, trustee, beneficiary or mortgagee, as the case may be, and shall be acceptable to the parties hereto with the same force and effect as if performed or fulfilled by such assignee, lessee, subsequent owner, trustee, beneficiary or mortgagee.

49.3 Each party serving a notice of default under this Agreement shall send by registered or certified United States mail, postage prepaid, a copy of such notice to any holder of a first mortgage on the Site of the party so served, provided such holder shall have sent the party serving the notice of default a notice informing it of the existence of such mortgage and the address to which copies of such notices of default are to be sent, and such holder shall be permitted to cure any such default not later than sixty (60) days after a copy of the notice of default shall have been sent to such holder, provided that in the case of a default which cannot with diligence be remedied within such period of sixty (60) days such holder shall have such additional period as may be necessary to remedy such default with diligence and continuity.

Section 50 - Section Headings.

The Section headings of this Agreement are for convenience and reference only and in no way define or limit the scope or content of this Agreement or in any way affect its provisions.

Section 51 - Gender.

The use herein of (i) the singular number shall be deemed to mean the plural, (ii) the masculine gender shall be deemed to mean the feminine or neuter and (iii) the neuter gender shall be deemed to mean the masculine or feminine whenever the sense of this Agreement so requires.

Section 52 - Joint and Several Liability of DDSI and Condev.

In recognition of the fact that in all cases this Agreement does not specify which of the obligations in respect of the Dillard Site are to be performed by DDSI and which are to be performed by Condev, except as otherwise

VOL 7451 PAGE 705

provided herein, (i) until the completion of construction of the Dillard Facilities and the opening of the Dillard Facilities, for business with the public, the liability of DDSI and Condev hereunder shall be joint and several, and the performance of any obligation of either DDSI or Condev by or on behalf of either such corporation shall constitute compliance with the obligation in question and (ii) thereafter, DDSI shall be solely liable and obliged hereunder.

VOL 7451 PAGE 706

Section 53 - Exculpation of Developer.

It is understood that nothing in this Agreement contained shall be construed as creating any personal liability whatsoever against the Partners of Developer and, in particular, there shall be no personal liability on the part of any such Partner to pay any indebtedness accruing under this Agreement or to perform any covenant, either express or implied, contained in this Agreement, and that all personal liability of the Partners of Developer is hereby jointly and severally expressly waived by the other Parties; and that so far as the Partners of Developer are concerned the owner of any indebtedness or liability accruing under this Agreement shall look solely to the premises (including, without limitation, the assets of the Developer and the rights therewith) which constitute the Developer Site and any buildings and other improvements thereon for the payment thereof. The provisions of this Section 53 are not designed to relieve Developer from the performance of any of its obligations hereunder, but rather to limit its liability, as aforesaid, nor shall any of the provisions of this section be deemed to limit or otherwise affect any Department store's right to obtain injunctive relief or avail itself of any other right or remedy which may be accorded to it by law or this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

Witnesses as to Developer:

Marcia Bird

WINDSOR PARK DEVELOPMENT COMPANY

By _____ General Partner

J. C. PENNEY PROPERTIES, INC.

By _____ Vice President

ATTEST: _____ Assistant Secretary

J. C. PENNEY PROPERTIES SEAL

Witnesses as to Penney:

Charlotte Flemm

Patti Engel

APPROVED

MONTGOMERY WARD DEVELOPMENT CORPORATION

ATTEST:

Secretary

By
Vice President and Treasurer

Witnesses as to Ward:

DILLARD DEPARTMENT STORES, INC.

ATTEST:

Secretary

By
President

Witnesses as to DDSI:

CONSTRUCTION DEVELOPERS, INCORPORATED

ATTEST:

Secretary

By
President

Witnesses as to Condev:

ALSTORES REALTY CORPORATION

ATTEST:

Assistant Secretary

By
Vice President

Witnesses as to Alstores:

VOL 7454 PAGE 707

ALLIED STORES OF TEXAS, INC.

ATTEST:

Assistant Secretary

By
~~Vice~~ President

Witnesses as to Joske:

VOL. 7451 PAGE 708

The provisions contained in the foregoing Agreement concerning arbitration of disputes have been fully explained by the undersigned as counsel for each party in accordance with the provisions of Article 224 of the Texas Revised Civil Statutes, and each of the respective parties, upon advice of their undersigned counsel, have agreed to be bound by such provisions.

Nico de Graaff
Counsel for Penney

Arthur J. Dempsey
Counsel for Allied

E. Charles Eichenbaum
Counsel for Dillard

William A. Voss
Counsel for Ward

Norman R. Newman
Counsel for Developer

STATE OF Indiana
COUNTY OF Marion } ss.:

On this the 16th day of September, 1974, before me, a Notary Public duly authorized in and for the said County in the State aforesaid to take acknowledgments, personally appeared Melvin Simon, a General Partner of Windsor Park Development Company, known to me to be the person(s) who subscribed to the foregoing instrument and acknowledged having executed the same as a free and voluntary act for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires:
6-21-75

J. Ann Curry
Notary Public

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

On this the 18th day of September, 1974, before me Arlene Crawford, the undersigned officer, personally appeared F. E. Sears, who acknowledged himself to be the Vice President of J. C. PENNEY PROPERTIES, INC., a corporation, and that he as such Vice President, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as Vice President.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(SEAL)

Arlene Crawford
Notary Public

ARLENE CRAWFORD
Notary Public, State of New York
No. 41-4[illegible]56
Qualified in [illegible] County
Certified filed in New York County
Commission Expires March 30, 1975

STATE OF Illinois)
COUNTY OF Cook) ss.:

On this the 16th day of September, 1974, before me Margaret A. Jordan, the undersigned officer, personally appeared Bruce B. Gidlow, who acknowledged himself to be the Vice President and Treasurer of MONTGOMERY WARD DEVELOPMENT CORPORATION, a corporation, and that he as such Vice President and Treasurer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as Vice President / Treasurer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(SEAL)

Margaret A. Jordan
Notary Public

My commission expires
on , 19

My Commission Expires November 29, 1975

VOL 7451 PAGE 709

STATE OF ARKANSAS)
COUNTY OF PULASKI) ss.:

VOL 7451 PAGE 710

On this the 23rd day of SEPTEMBER, 1974, before me CECIL H. SIMMONS, the undersigned officer, personally appeared WILLIAM DILLARD, who acknowledged himself to be the PRESIDENT of DILLARD DEPARTMENT STORES, INC., a corporation, and that he as such PRESIDENT, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

CECIL H. SIMMONS NOTARY PUBLIC PULASKI CO.

(SEAL)

Cecil H. Simmons
Notary Public

My commission expires on My Commission Expires Dec. 27, 1979

STATE OF ARKANSAS)
COUNTY OF PULASKI) ss.:

On this the 23rd day of SEPTEMBER, 1974, before me CECIL H. SIMMONS, the undersigned officer, personally appeared WILLIAM DILLARD, who acknowledged himself to be the PRESIDENT of CONSTRUCTION DEVELOPERS, INCORPORATED, a corporation, and that he as such PRESIDENT, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

CECIL H. SIMMONS NOTARY PUBLIC PULASKI COUNTY

(SEAL)

Cecil H. Simmons
Notary Public

My commission expires on My Commission Expires Dec. 27, 1979

STATE OF New York
COUNTY OF New York } ss.:

On this the 30th day of Sept, 1974, before me, a Notary Public duly authorized in and for the said County in the State aforesaid to take acknowledgments, personally appeared E. H. Zenkel residing at Harrison, New York to me known and known to me to be Vice President of ALSTORES REALTY CORPORATION, one of the corporations described in the foregoing instrument, and acknowledged that as such officer, being authorized so to do, he executed the foregoing instrument on behalf of said corporation by subscribing the name of such corporation by himself as such officer and caused the corporate seal of said corporation to be affixed thereto, as his free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires:

JANICE RAE GALLSTRAND
NOTARY PUBLIC, State of New York
No. 41-8738670
Qualified in Queens County
Cert. filed in New York County
Commission Expires March 30, 1976

GALLSTRAND NOTARY PUBLIC STATE OF NEW YORK

Janice Rae Gallstrand
Notary Public

STATE OF New York
COUNTY OF New York } SS.:

On this the 20 day of Sept, 1974, before me, a Notary Public duly authorized in and for the said County in the State aforesaid to take acknowledgments, personally appeared Tom McCormick, residing at San Antonio, Texas to me known and known to me to be President of ALLIED STORES OF TEXAS, INC., one of the corporations described in the foregoing instrument, and acknowledged that as such officer, being authorized so to do, he executed the foregoing instrument on behalf of said corporation by subscribing the name of such corporation by himself as such officer and caused the corporate seal of said corporation to be affixed thereto, as his free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires:
JANICE RAE STRAND
NOTARY PUBLIC, State of New York
No. 41-8738670
Qualified in Queens County
Cert. filed in New York County
Commission Expires March 30, 1976

Janice Rae Strand
Notary Public

SHELSTAN NOTARIAL SEAL

VOL 7451 PAGE 711

EXHIBIT "A"

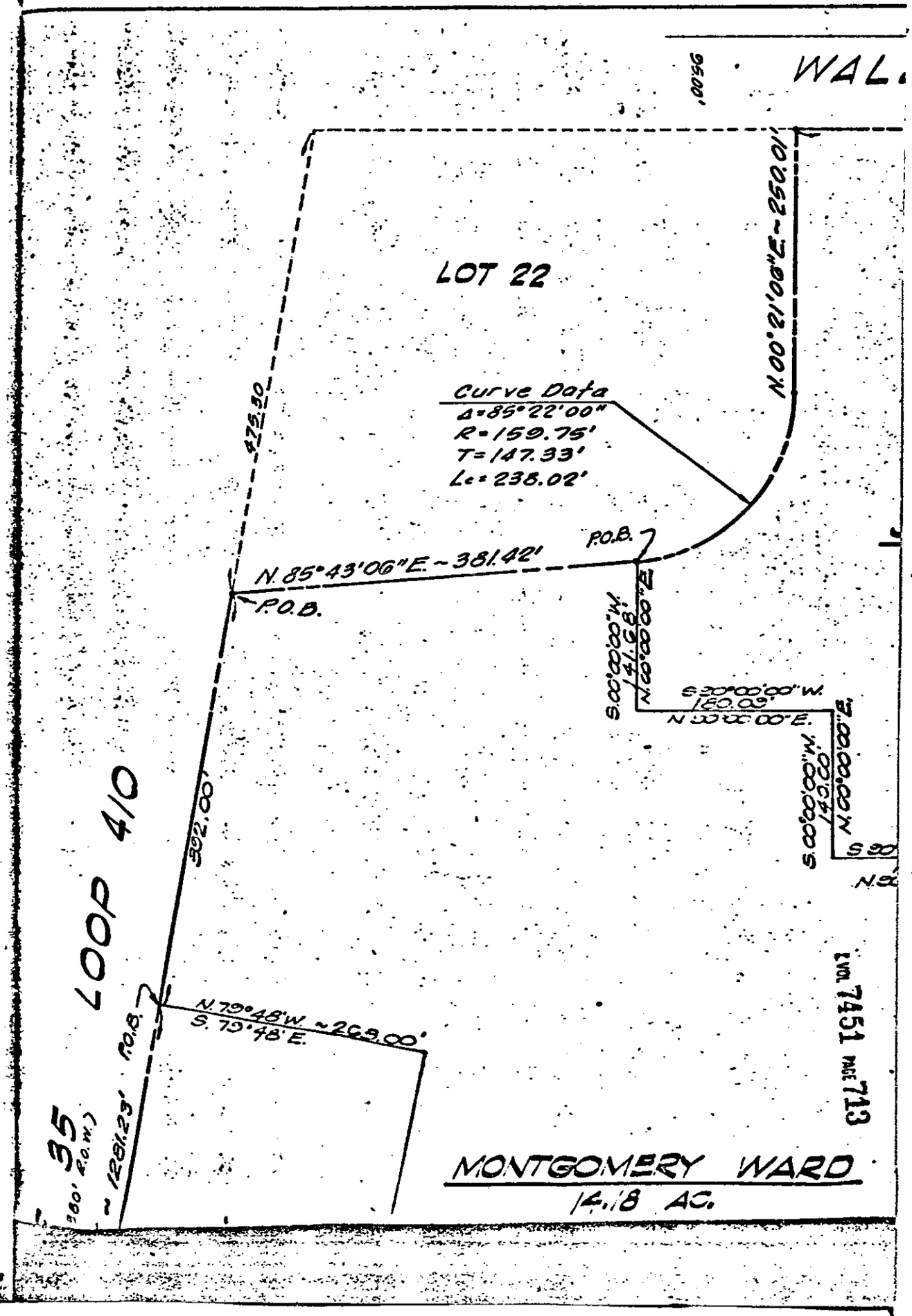
SURVEY

Attached to and forming part of Easement and Operating Agreement dated Sept. 10, 1974, by and between Windsor Park Development Company, J. C. Penney Properties, Inc., Montgomery Ward Development Corporation, Dillard Department Stores, Inc., Construction Developers, Incorporated, Alstores Realty Corporation, and Allied Stores of Texas, Inc. covering Windsor Park Mall Shopping Center, San Antonio, Texas.

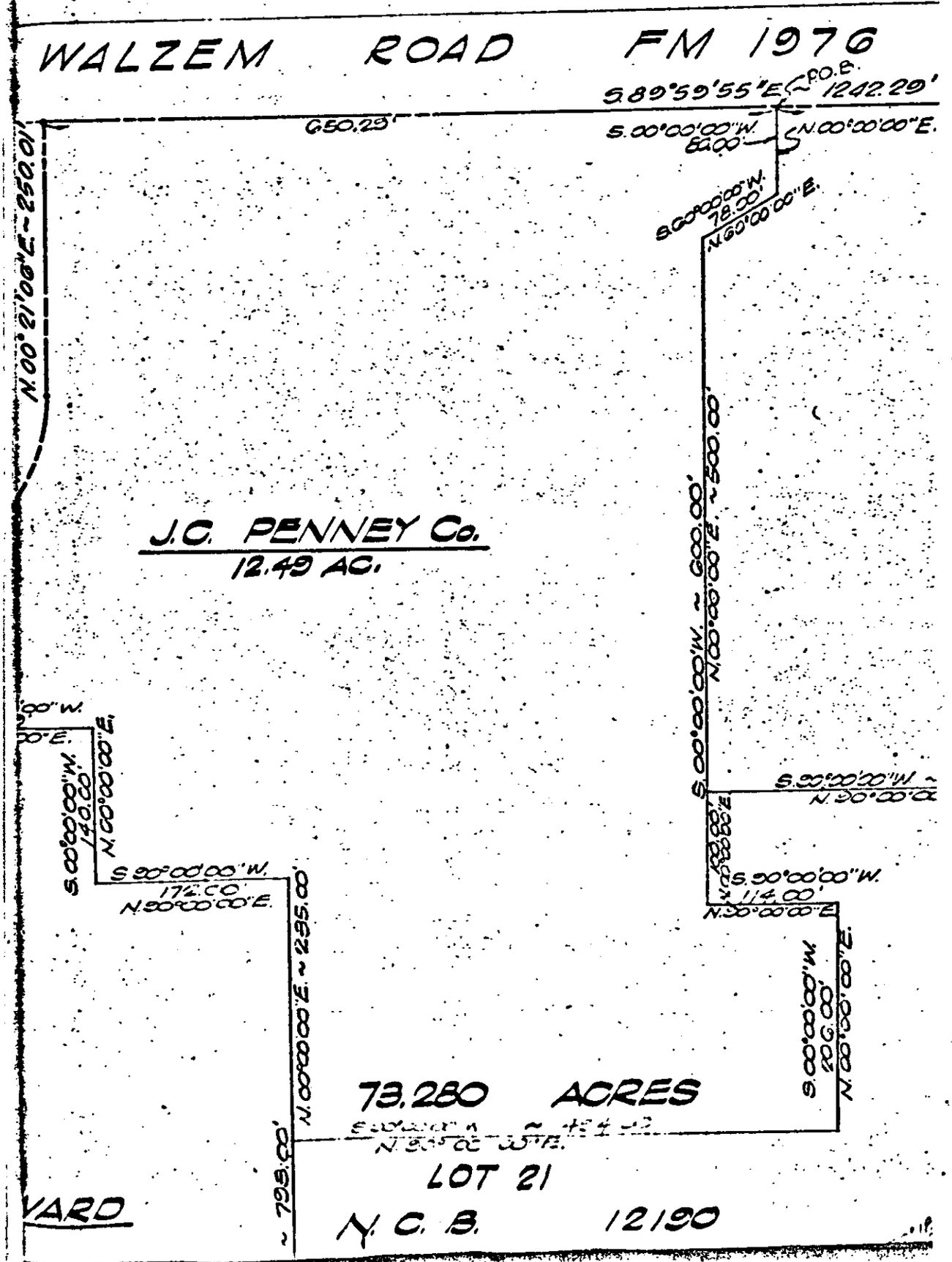
Initialed by:	Initialed by:	Initialed by:
Developer BY	Penney BY	Ward BY
DDSI BY	Condev BY	Alstores BY
Jonke BY		

H95 10x12 WILSON JONES ANCHOR CLIP BINDERS

EX-A



VOL. 7451 PAGE 743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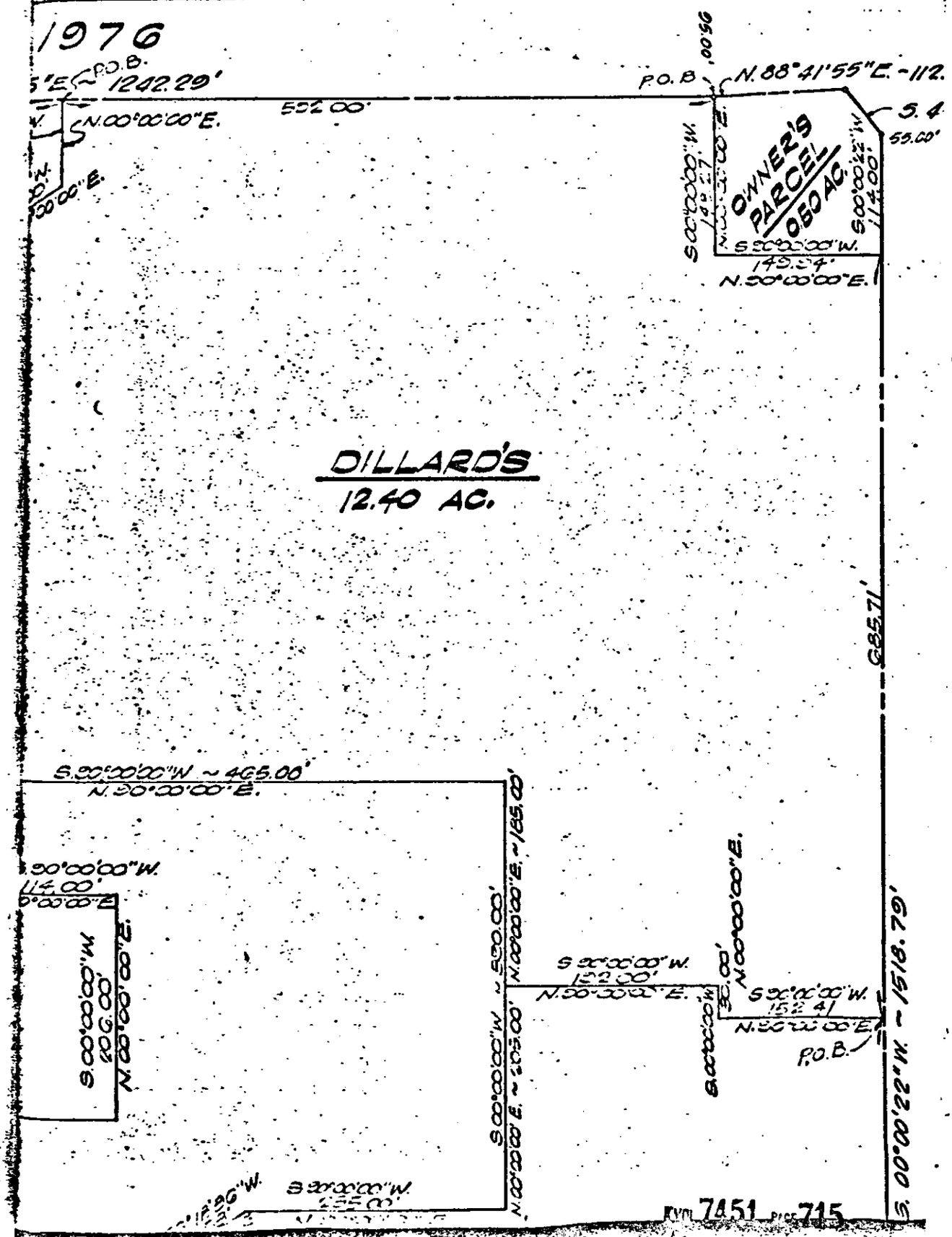
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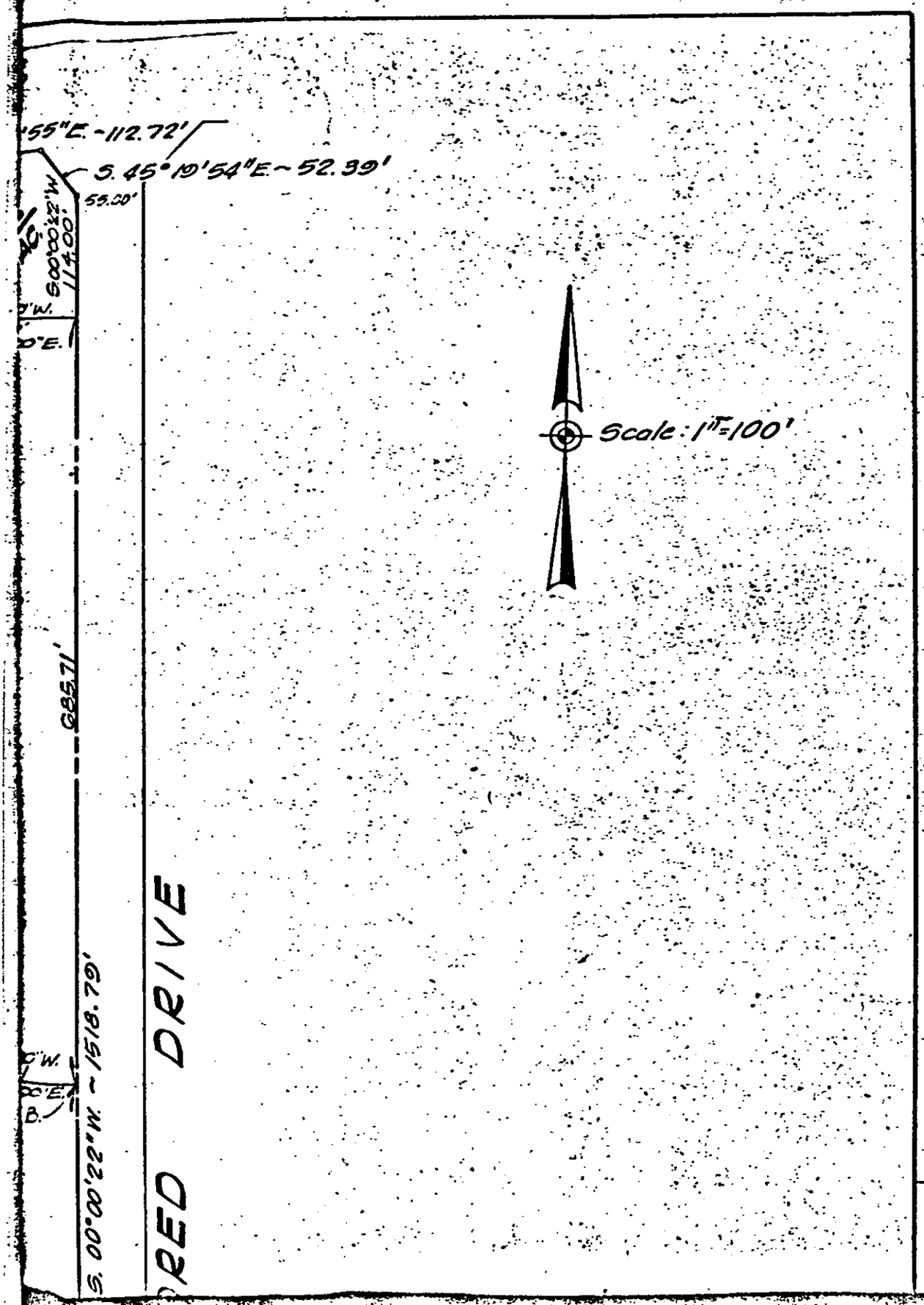
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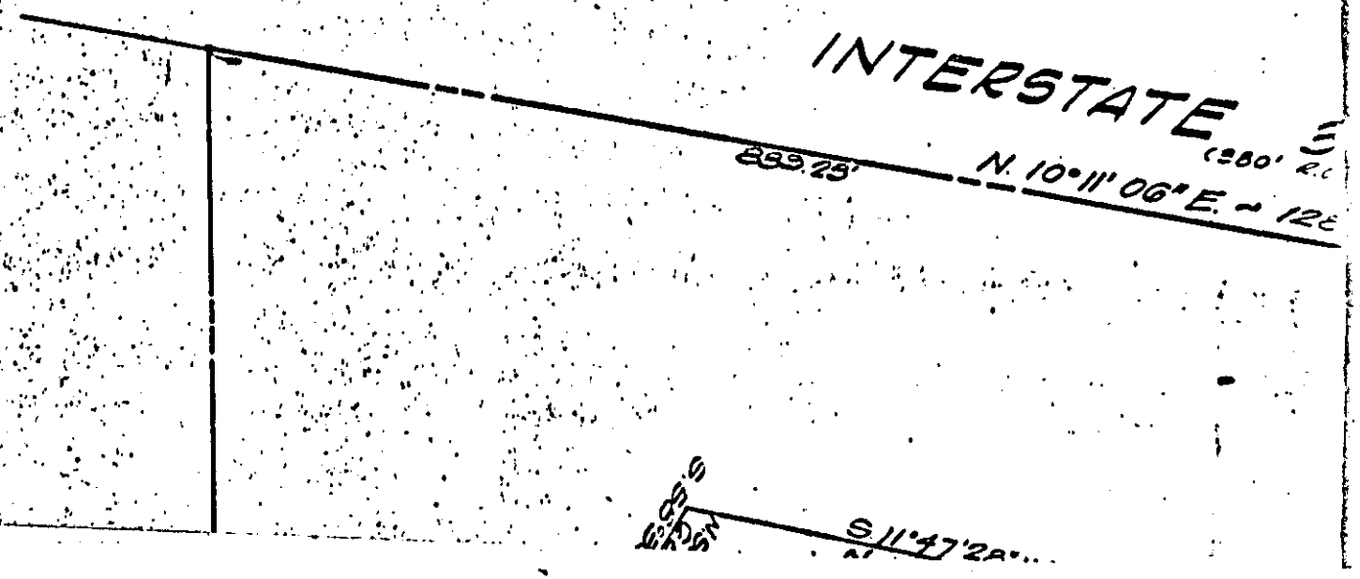
Scale: 1"=100'
685.71'
S. 00°00'22"W. ~ 1518.79'
B.
RED DRIVE

Attached to and forming part of Easement and Operating Agreement dated Sept. 10, 1974, by and between Windsor Park Development Company, J. C. Penney Properties, Inc., Montgomery Ward Development Corporation, Dillard Department Stores, Inc., Construction Developers, Incorporated, Alstores Realty Corporation, and Allied Stores of Texas, Inc. covering Windsor Park Mall Shopping Center, San Antonio, Texas.

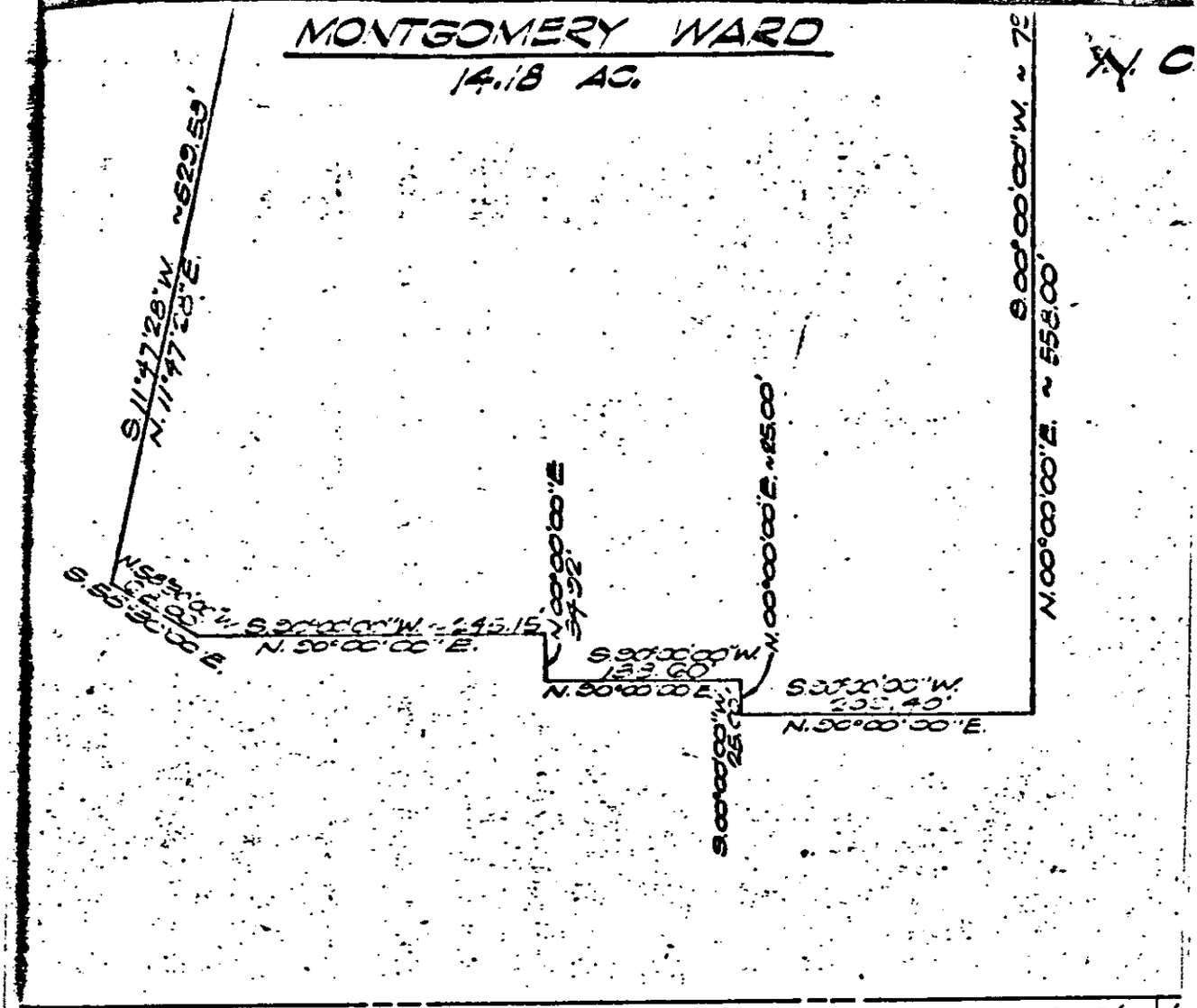
Initialed by:	Initialed by:	Initialed by:
Developer BY	Penney BY	Ward BY
DDSI BY	Condev BY	Alstores BY
Joske BY		



revisions	
9-5-74	Added Parcels

4409 PROJECT NUMBER
8/20/74 DATE
O.L. DRAWN BY
A.B.F. CHECKED BY

G-1



S.89°46'08"

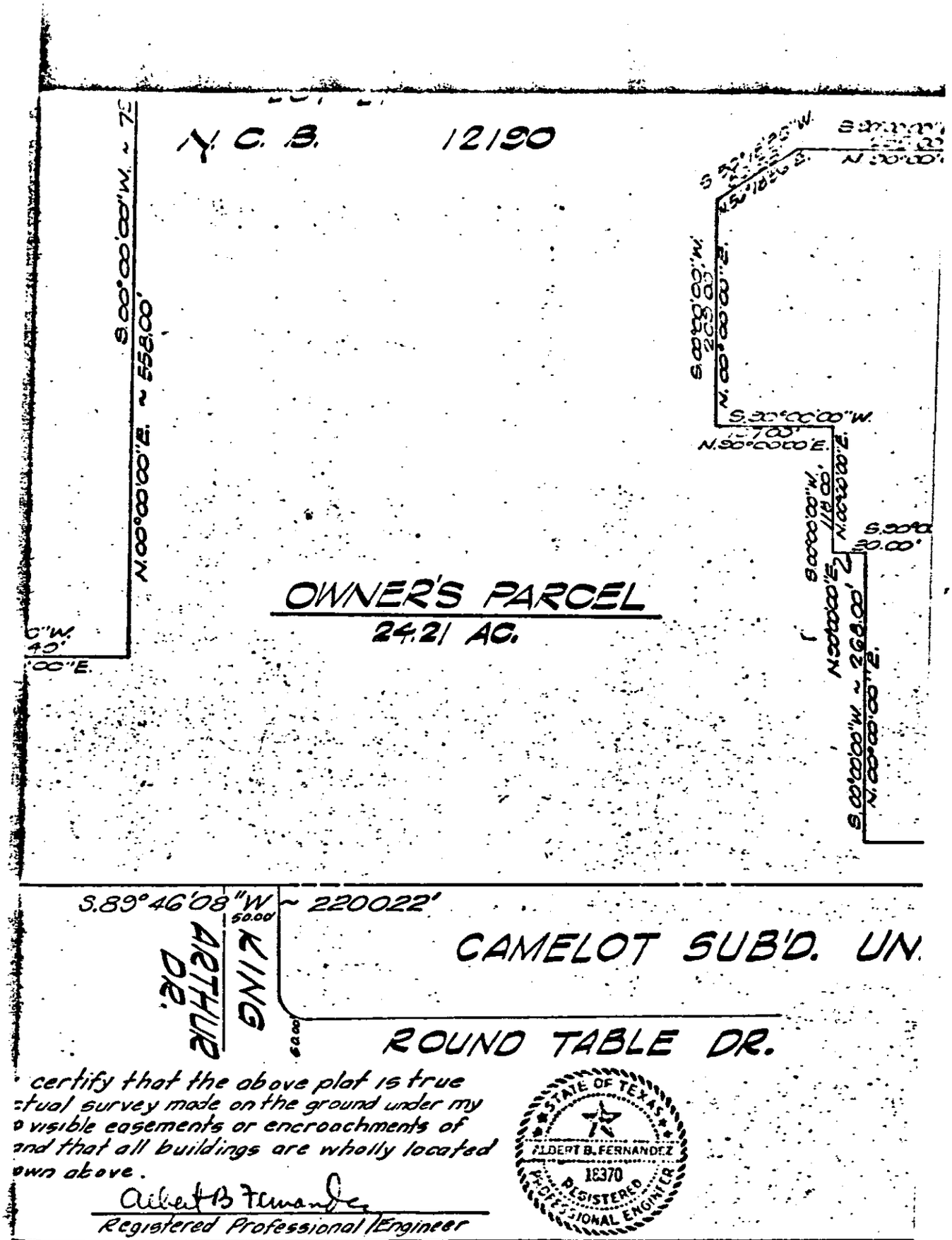
ARTHUR
DR.

State of Texas
County of Bexar

I, Albert B. Fernandez, hereby certify that the
and correct according to an actual survey made
supervision and that there are no visible easements
buildings on adjoining property and that all buildin
on this property except as shown above.

Albert B
Registered

Groves, Fernandez, Ludwig
and Associates,
CONSULTING ENGINEERS /

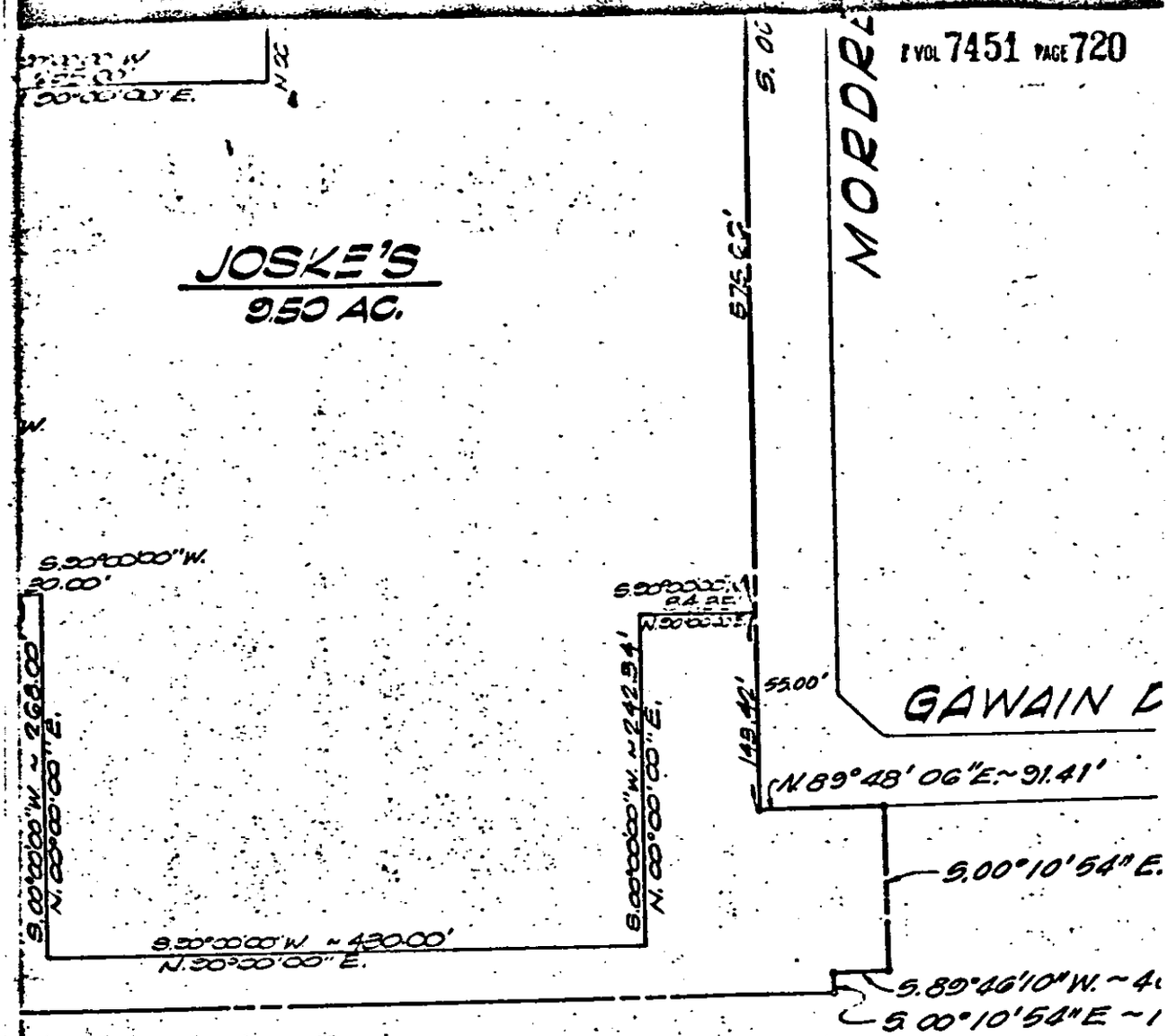


certify that the above plat is true
ctual survey made on the ground under my
visible easements or encroachments of
and that all buildings are wholly located
own above.

Albert B Fernandez
Registered Professional Engineer

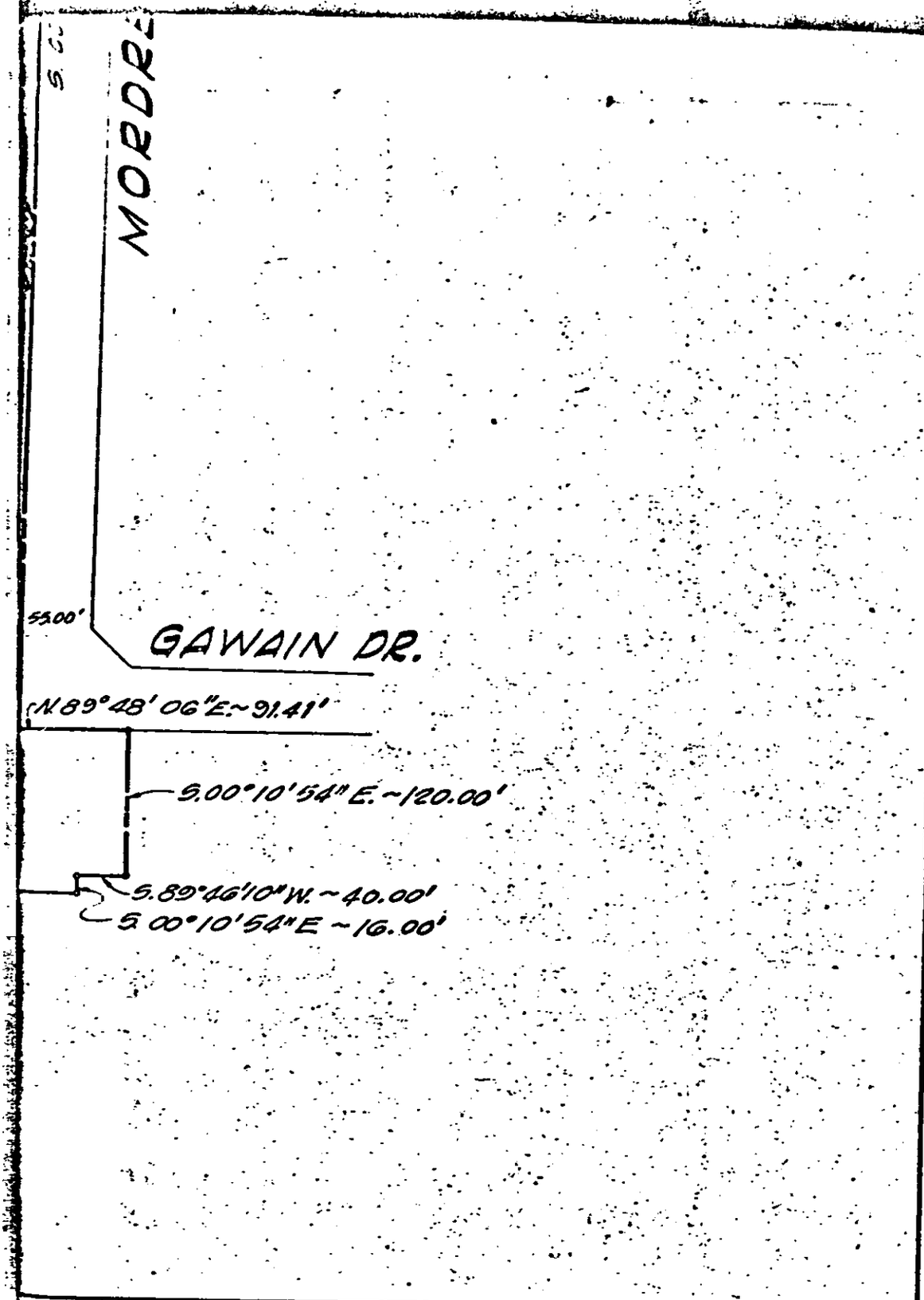
STATE OF TEXAS
ALBERT B. FERNANDEZ
18370
REGISTERED
PROFESSIONAL ENGINEER

Ludwig, Barry, Telford
ciates, Inc.
GINEERS / PLANNERS



UNIT 7

SURVEY PLAT OF LOT 21, N.C.B. 12190,
73.280 AC. ~ SIMON SUBDIVISION
Vol. 7300 ~ Pg. 69 & 70



N.C.B. 12190,
IVISION
O

SHEET 1 of sheets

VOL 7451 PAGE 721 4409

EXHIBIT "B"

DESCRIPTION OF ENTIRE PREMISES

A 73.280 acre tract of land out of the Gertrude Rodriguez Survey No. 132, being Lot 21, N.C.B. 12190 out of Simon Subdivision as recorded in Volume 7300 page 69 & 70 and being more fully described by metes and bounds as follows:

Beginning at a point on the east R.O.W. line of Interstate Highway (Loop 410) 35 said point being S 10°11'06" W, 475.30 feet from the intersection of the east R.O.W. line of said IH 35 with the south R.O.W. line of FM (Walzem) Road 1976; said point also being the northwest corner of said Lot 21;

Thence N 85°43'06" E, 381.42 feet along a common line between Lot 21 and Lot 22 to a point of curvature of a curve to the left;

Thence 238.02 feet along said curve to the left having a central angle of 85°22'00", a radius of 159.75 feet and a tangent of 147.33 feet to a point of tangent;

Thence N 00°21'06" E, 250.01 feet along a line to a point on the south R.O.W line of FM (Walzem) Road 1976 for a corner;

Thence S 89°59'55" E, 1242.29 feet along the south R.O.W. of said Walzem Road to a point for a corner;

Thence N 88°41'55" E, 112.72 feet continuing along said R.O.W. line to a point for a corner;

Thence S 45°19'54" E, 52.39 feet along a line to a point on the west R.O.W. line of Mordred Drive for a corner;

Thence S 00°00'22" W, 1518.79 feet along said R.O.W. line to a point on the south R.O.W. line of Gawain Drive for a corner;

Thence N 89°48'06" E, 91.41 feet along said south R.O.W. line of Gawain Drive to a point for a corner;

Thence S 00°10'54" E, 120.00 feet along a line to a point for a corner;

Thence S 89°46'10" W, 40.00 feet along a line to a point for an interior corner;

Thence S 00°10'54" E, 16.00 feet along a line to a point on the north line of Camelot Subdivision Unit 7 for a corner;

Thence S 89°46'08" W, 2200.22 feet along said north line of Camelot Subdivision Unit 7 to a point on the east R.O.W. line of IH 35 for the southwest corner of this tract.

Thence N 10°11'06" E, 1281.23 feet along the east R.O.W. line of said IH 35 to the place of beginning and containing 73.280 acres of land more or less.

Attached to and forming part of Easement and Operating Agreement dated Sept. 10, 1974, by and between Windsor Park Development Company, J. C. Penney Properties, Inc., Montgomery Ward Development Corporation, Dillard Department Stores, Inc., Construction Developers, Incorporated, Alstores Realty Corporation, and Allied Stores of Texas, Inc. covering Windsor Park Mall Shopping Center, San Antonio, Texas.

ORIGINAL DIM

Initialed by:	Initialed by:	Initialed by:
Developer BY	Penney BY	Ward BY
DDSI BY	Condev BY	Alstores BY
Jordo BY		

EXHIBIT "C"

DESCRIPTION OF PENNEY SITE

A 12.49 acre tract of land out of the Gertrude Rodriguez Survey No. 132, being a portion of Lot 21, N.C.B. 12190 out of Simon Subdivision as recorded in Volume 7300 page 69 & 70 and being more fully described by metes and bounds as follows:

Commencing at a point on the east R.O.W. line of Interstate Highway (Loop 410) 35 said point being S 10°11'06" W, 475.30 feet from the intersection of the east R.O.W. line of said IH 35 extended and the south R.O.W. line of FM (Walzem) Road 1976 extended;

Thence N 85°43'06" E, 381.42 feet along a common line between Lot 21 and Lot 22 to a point of curvature of a curve to the left said point being the place of beginning;

Thence 238.02 feet along said curve to the left having a central angle of 85°22'00", a radius of 159.75 feet and tangent of 147.33 feet to a point of tangent;

Thence N 00°21'06" E, 250.01 feet along a line to a point on the south R.O.W. line of FM (Walzem) Road 1976 for a corner;

Thence S 89°59'55" E, 650.29 feet along the south R.O.W. of said Walzem Road to a point for a corner;

Thence S 00°00' W, 80.00 feet to a point for a corner;

Thence S 60°00' W, 78.00 feet to a point for a corner;

Thence S 00°00' W, 600.00 feet to a point for a corner;

Thence N 90°00' E, 114.00 feet to a point for a corner;

Thence S 00°00' W, 206.00 feet to a point for a corner;

Thence S 90°00' W, 494.00 feet to a point for a corner;

Thence N 00°00' E, 235.00 feet to a point for a corner;

Thence S 90°00' W, 172.00 feet to a point for a corner;

Thence N 00°00' E, 140.00 feet to a point for a corner;

Thence S 90°00' W, 180.09 feet to a point for a corner;

Thence N 00°00' E, 141.68 feet to the place of beginning and containing 12.49 acres more or less.

Attached to and forming part of Easement and Operating Agreement dated Sept 10, 1974, by and between Windsor Park Development Company, J. C. Penney Properties, Inc., Montgomery Ward Development Corporation, Dillard Department Stores, Inc., Construction Developers, Incorporated, Alstores Realty Corporation, and Allied Stores of Texas, Inc. covering Windsor Park Mall Shopping Center, San Antonio, Texas.

Initialed by:	Initialed by:	Initialed by:
Developer	Penney	Ward
BY	BY	BY
DDSI	Condey	Alstores
BY	BY	BY
Joske		
BY		

VOL 7451 PAGE 723

EXHIBIT "D"

LEGAL DESCRIPTION OF WARD SITE

A 14.18 acre tract of land out of the Gertrude Rodriguez Survey No. 132, being a portion of Lot 21, N.C.B. 12190 out of Simon Subdivision as recorded Volume 7300 page 69 & 70 and beimg more fully described by metes and bounds as follows:

Beginning at a point on the east R.O.W. line of Interstate Highway (Loop 410) 35 said point being S 10°11'06" W, 475.30 feet from the intersection of the east R.O.W. line of said IH 35 extended and the south R.O.W. line of FM (Walzem) Road 1976 extended;

Thence N 85°43'06" E, 381.42 feet along a common line between Lot 21 and lot 22 to a point for a corner;

Thence S 00°00' W, 141.68 feet to a point for a corner;

Thence N 90°00' E, 180.09 feet to a point for a corner;

Thence S 00°00' W, 140.00 feet to a point for a corner;

Thence N 90°00' E, 172.00 feet to a point for a corner;

Thence S 00°00' W, 793.00 feet to a point for a corner;

Thence S 90°00' W, 209.40 feet to a point for a corner;

Thence N 00°00' E, 25.00 feet to a point for a corner;

Thence S 90°00' W, 138.60 feet to a point for a corner;

Thence N 00°00' E, 34.92 feet to a point for a corner;

Thence S 90°00' W, 245.15 feet to a point for a corner;

Thence N 58°30' W, 68.00 feet to a point for a corner;

Thence N 11°47'28" E, 529.53 feet to a point for a corner;

Thence N 79°48'W, 263.00 feet to a poitn on the east R.O.W. line of IH 35 to a point for a corner;

Thence N 10°11'06" E, 392.00 feet along the east R.O.W. line of said IH 35 to the place of beginning and containing 14.18 acres of land more or less.

Attached to and forming part of Easement and Operating Agreement dated [illegible] 10, 1974, by and between Windsor Park Development Company, J. C. Penney Properties, Inc., Montgomery Ward Development Corporation, Dillard Department Stores, Inc., Construction Developers, Incorporated, Alstores Realty Corporation, and Allied Stores of Texas, Inc. covering Windsor Park Mall Shopping Center, San Antonio, Texas.

Initialed by:

Developer

BY _____

DDSI

BY _____

Jonke

BY _____

Initialed by:

Penney

BY _____

Condev

BY _____

Initialed by:

Ward

BY _____

Alstores

BY _____

ORIGINAL DIM

ORIGINAL DIM

LEGAL DESCRIPTION OF DILLARD SITE

A 12.40 acre tract of land out of the Gertrude Rodriguez Survey No. 132, being a portion of Lot 21, N.C.B. 12190 out of Simon Subdivision as recorded in Volume 7390 page 69 & 70 and being more fully described by metes and bounds as follows:

Commencing at a point on the east R.O.W. line of Interstate Highway (Loop 410) 35 said point being S 10°11'06" E, 475.50 feet from the intersection of the east R.O.W. line of said IH 35 extended and the south R.O.W. line of FM (Walzem) Road 1976 extended;

Thence N 85°43'06" E, 381.42 feet along a common line between Lot 21 and Lot 22 to a point of curvature of a curve to the left;

Thence 238.02 feet along said curve to the left having a central angle of 85°22'00", a radius of 159.75 feet and a tangent of 147.33 feet to a point of tangent;

Thence N 00°21'06" E, 250.01 feet along a line to a point on the south R.O.W. line of FM (Walzem) Road 1976 for a corner;

Thence S 89°59'55" E, 650.29 feet along the south R.O.W. of said Walsem Road to the place of beginning;

Thence continuing S 89°59'55" E, 592.00 feet along the south R.O.W. of said Walzem Road to a point for a corner;

Thence S 00°00' W, 148.27 feet to a point for a corner;

Thence N 90°00' E, 149.94 feet to a point on the west R.O.W. line of Mordred Drive for a point for a corner;

Thence S 00°00'22" E, 685.71 feet to a point for a corner;

Thence S 90°00' W, 152.41 feet to a point for a corner;

Thence N 00°00' E, 30.00 feet to a point for a corner;

Thence S 90°00' W, 192.00 feet to a point for a corner;

Thence N 00°00' E, 185.00 feet to a point for a corner;

Thence S 90°00' W, 465.00 feet to a point for a corner;

Thence N 00°00' E, 500.00 feet to a point for a corner;

Thence N 60°00' E, 78.00 feet to a point for a corner;

Thence N 00°00' E, 80.00 feet to the place of beginning and containing 12.40 acres of land more or less.

Attached to and forming part of Easement and Operating Agreement dated SEPT. 10, 1974, by and between Windsor Park Development Company, J. C. Penney Properties, Inc., Montgomery Ward Development Corporation, Dillard Department Stores, Inc., Construction Developers, Incorporated, Alstores Realty Corporation, and Allied Stores of Texas, Inc. covering Windsor Park Mall Shopping Center, San Antonio, Texas.

Initialed by:	Initialed by:	Initialed by:
Developer	Penney	Ward
BY MW	BY WT	BY WW
DDST	Condev	Alstores
BY	BY	BY
Joske		
BY		

EXHIBIT "F"

LEGAL DESCRIPTION OF DEVELOPER SITE

ORIGINAL DIM

A 24.21 acre tract of land out of the Gertrude Rodriguez Survey No. 132, being a portion of Lot 21, N.C.B. 12190 out of Dixon Subdivision as recorded in Volume 7300 page 69 & 70 and being more fully described by metes and bounds as follows:

Beginning at a point on the east R.O.W. line of Interstate Highway (Loop 410) 35 said point being S 10°11'06" W, 867.30 feet from the intersection of the east R.O.W. line of IH 35 extended and the south R.O.W. line of FM (Walzem) Road 1976 to the place of beginning;

Thence S 79°48' E, 263.00 feet to a point for a corner;

Thence S 11°47'28" W, 529.53 feet to a point for a corner;

Thence S 58°30' E, 68.00 feet to a point for a corner;

Thence N 90°00' E, 245.15 feet to a point for a corner;

Thence S 00°00' W, 34.92 feet to a point for a corner;

Thence N 90°00' E, 138.60 feet to a point for a corner;

Thence S 00°00' W, 25.00 feet to a point for a corner;

Thence N 90°00' E, 209.40 feet to a point for a corner;

Thence N 00°00' E, 558.00 feet to a point for a corner;

Thence N 90°00' E, 494.00 feet to a point for a corner;

Thence N 00°00' E, 206.00 feet to a point for a corner;

Thence S 90°00' W, 114.00 feet to a point for a corner;

Thence N 00°00' E, 100.00 feet to a point for a corner;

Thence N 90°00' E, 465.00 feet to a point for a corner;

VOL 7451 PAGE 726

Thence S 00°00' W, 390.00 feet to a point for a corner;

Thence S 90°00' W, 235.00 feet to a point for a corner;

Thence S 56°18'36" W, 86.53 feet to a point for a corner;

Thence S 00°00' W, 209.00 feet to a point for a corner;

Thence N 90°00' E, 107.00 feet to a point for a corner;

Thence S 00°00' W, 118.00 feet to a point for a corner;

Thence N 90°00' E, 30.00 feet to a point for a corner;

Thence S 00°00' W, 268.00 feet to a point for a corner;

Thence N 90°00' E, 430.00 feet to a point for a corner;

Thence N 00°00' E, 242.34 feet to a point for a corner;

Thence N 90°00' E, 84.35 feet to a point on the west R.O.W. line of Mordred Drive for a corner;

Thence S 00°00'22" W, 143.42 feet along said R.O.W. line to a point on the south R.O.W. line of Gawain Drive for a corner;

Thence N 89°48'06" E, 91.41 feet along said south R.O.W line of Gawain Drive to a point for a corner;

Thence S 00°10' 54" E, 120.00 feet along a line to a point for a corner;

Thence S 89°46'10" W, 40.00 feet along a line to a point for an interior corner;

Thence S 00°10'54" E, 16.00 feet along a line to a point on the north line of Camelot Subdivision Unit 7 for a corner;

Thence S 89°46'08" W, 2200.22 feet along said north line of Camelot Subdivision Unit 7 to a point on the east R.O.W. line of Hi 35 for the southwest corner of this tract;

Thence N 10°11'06" E, 889.23 feet along the east R.O.W. line of said Hi 35 to the place of beginning and containing 24.21 acres of land more or less.

VOL 7451 PAGE 727

A 0.50 acre tract of land out of the Gertrude Rodriguez Survey No. 152, being a portion of Lot 21, N.C.B. 12190 out of Simon Subdivision as recorded in Volume 7300 page 69 & 70 and being more fully described by metes and bounds as follows:

Commencing at a point on the east R.O.W. line of Interstate Highway (Loop 410) 35 said point being S 10°11'05" W, 475.30 feet from the intersection of the east R.O.W. line of said IH 35 extended and the south R.O.W. line of FM (Walzem) Road 1976 extended;

Thence N 85°43'06" E, 381.42 feet along a common line between Lot 21 and Lot 22 to a point of curvature of a curve to the left;

Thence 238.02 feet along said curve to the left having a central angle of 85°22'00", a radius of 159.75 feet and a tangent of 147.33 feet to a point of tangent;

Thence N 00°21'06" E, 250.01 feet along a line to a point on the south R.O.W. line of FM (Walzem) Road 1976 for a corner;

Thence S 89°59'55" E, 1242.29 feet along the south R.O.W. of said Walzem Road to the place of beginning;

Thence N 88°41'55" E, 112.72 feet continuing along said R.O.W. line to a point for corner;

Thence S 45°19'54" E, 52.39 feet along a line to a point on the west R.O.W line of Mordred Drive for a corner;

Thence S 00°00'22" W, 114.00 feet along said R.O.W. line to a point for a corner;

Thence S 90°00' W, 149.94 feet to a point for a corner;

Thence N 00°00' E, 148.27 feet to the place of beginning and containing 0.50 feet more or less.

AS ORIGINAL

Easement and

Attached to and forming part of Easement and Operating Agreement dated SEPT 10, 1974, by and between Windsor Park Development Company, J. C. Penney Properties, Inc., Montgomery Ward Development Corporation, Dillard Department Stores, Inc., Construction Developers, Incorporated, Alstores Realty Corporation, and Allied Stores of Texas, Inc. covering Windsor Park Mall Shopping Center, San Antonio, Texas.

Initialed by:	Initialed by:	Initialed by:
Developer	Penney	Ward
BY	BY	BY
DDSI	Conday	Alstores
BY	BY	BY
Alstores		
BY		

VOL 7451 PAGE 729

EXHIBIT "G"

PLOT PLAN

VOL 7451 PAGE 730

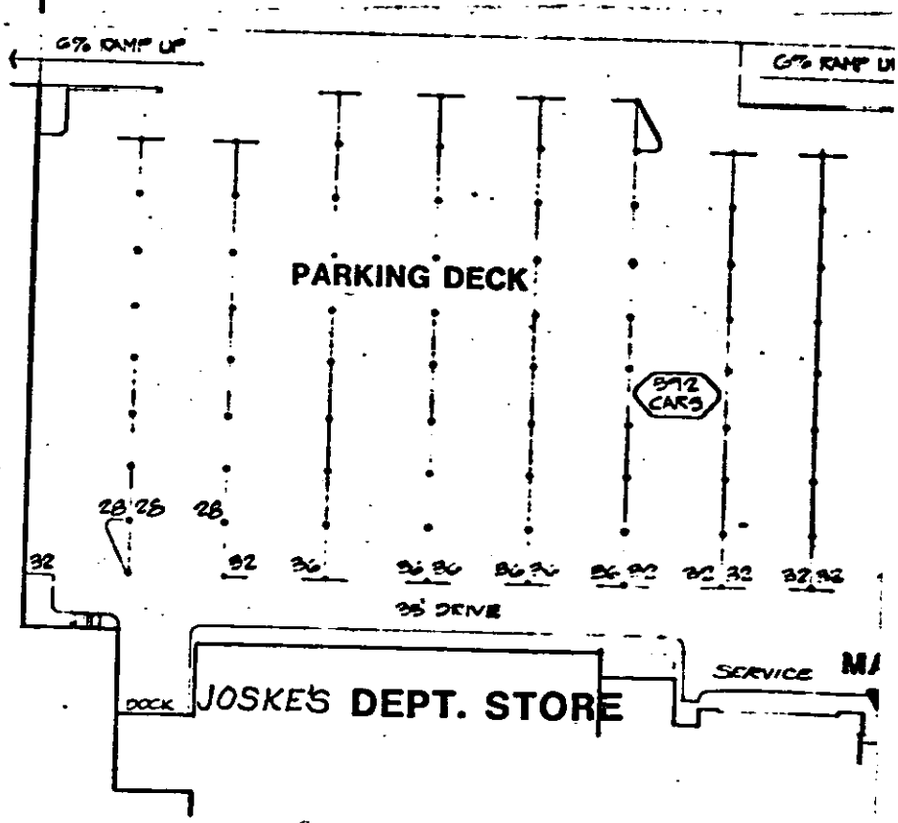
Attached to and forming part of Easement and Operating Agreement dated JEPT 10 , 1974, by and between Windsor Park Development Company, J. C. Penney Properties, Inc., Montgomery Ward Development Corporation, Dillard Department Stores, Inc., Construction Developers, Incorporated, Alstores Realty Corporation, and Allied Stores of Texas, Inc. covering Windsor Park Mall Shopping Center, San Antonio, Texas.

Initialed by:	Initialed by:	Initialed by:
Developer	Penney	Ward
BY	BY	BY
DOST	Condev	Alstores
BY	BY	BY
Joske		
BY		

EX-G

Attached to and forming part of Easement and Operating Agreement dated Sept. 10, 1974, by and between Windsor Park Development Company, J. C. Penney Properties, Inc., Montgomery Ward Development Corporation, Dillard Department Stores, Inc., Construction Developers, Incorporated, Alstores Realty Corporation, and Allied Stores of Texas, Inc. covering Windsor Park Mall Shopping Center, San Antonio, Texas.

Initialed by:	Initialed by:	Initialed by:
Developer BY	Penney BY	Ward BY
DDSI BY	Condev BY	Alstores BY
Joske BY		



LOWER LEVEL PARKIN

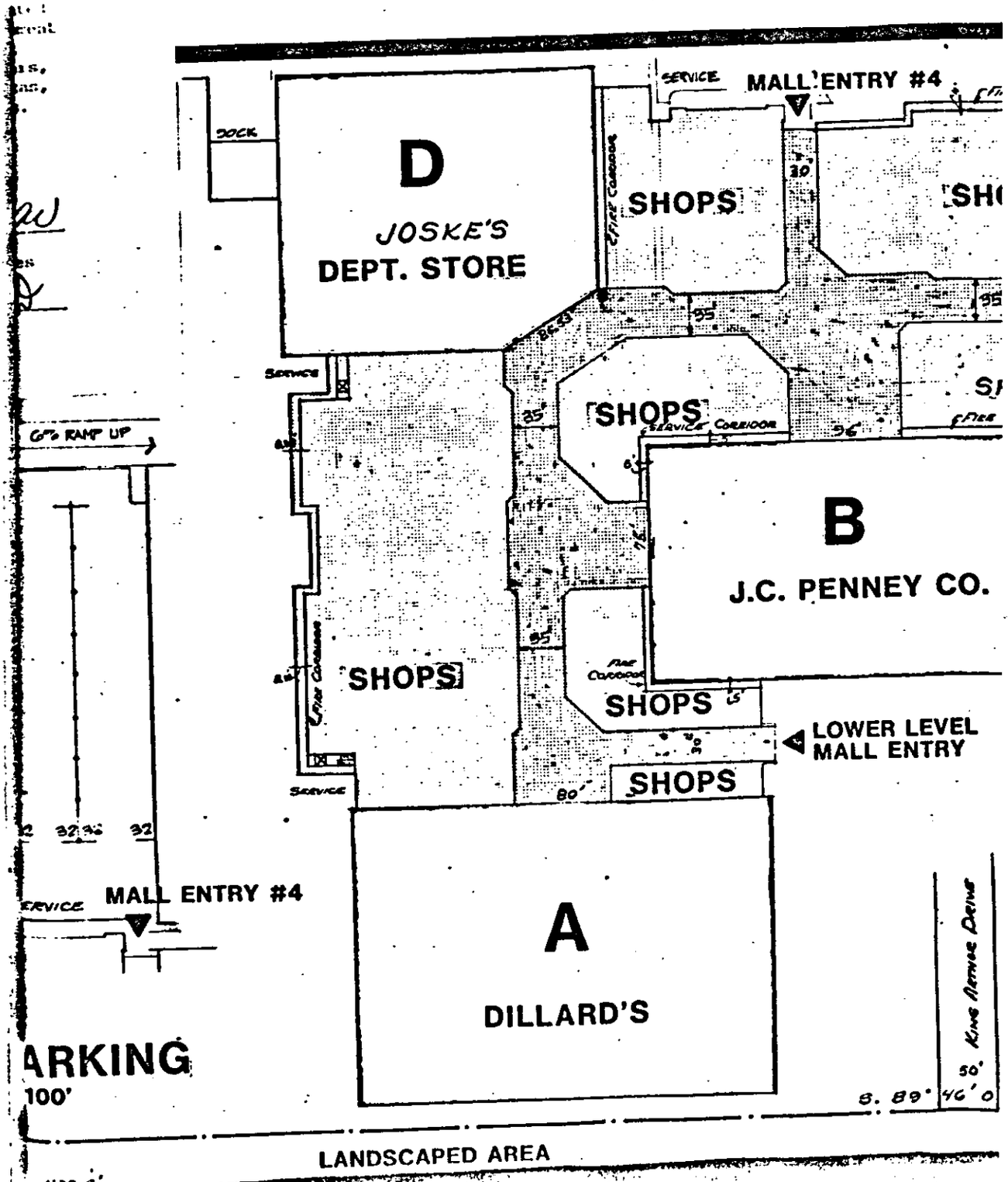
SCALE 1"= 100'

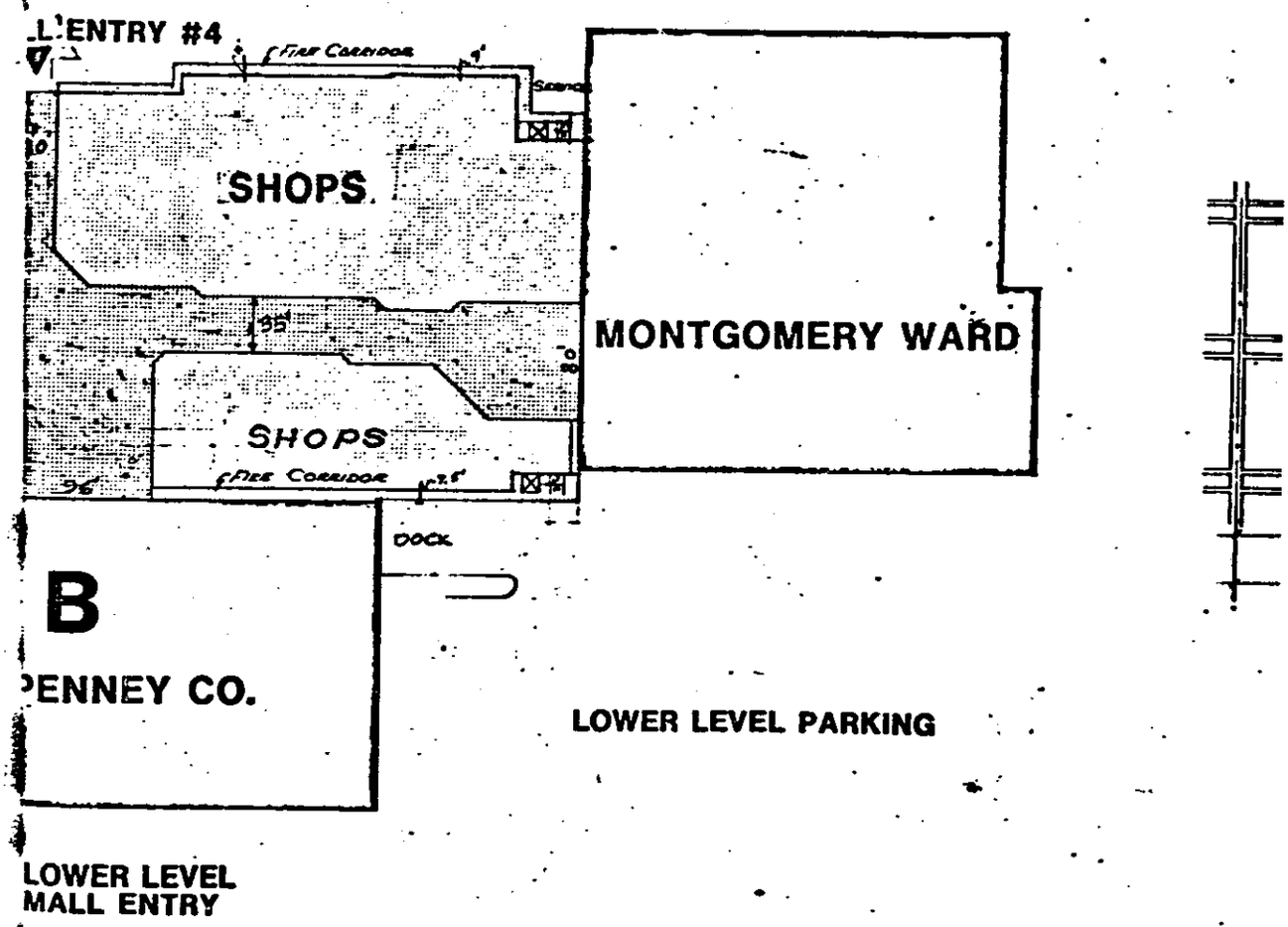
VOL 7451 PAGE 731

S 89°46'10"W 48.00'

S 00°10'54"E 16.00'

VOL 7451 PAGE 732

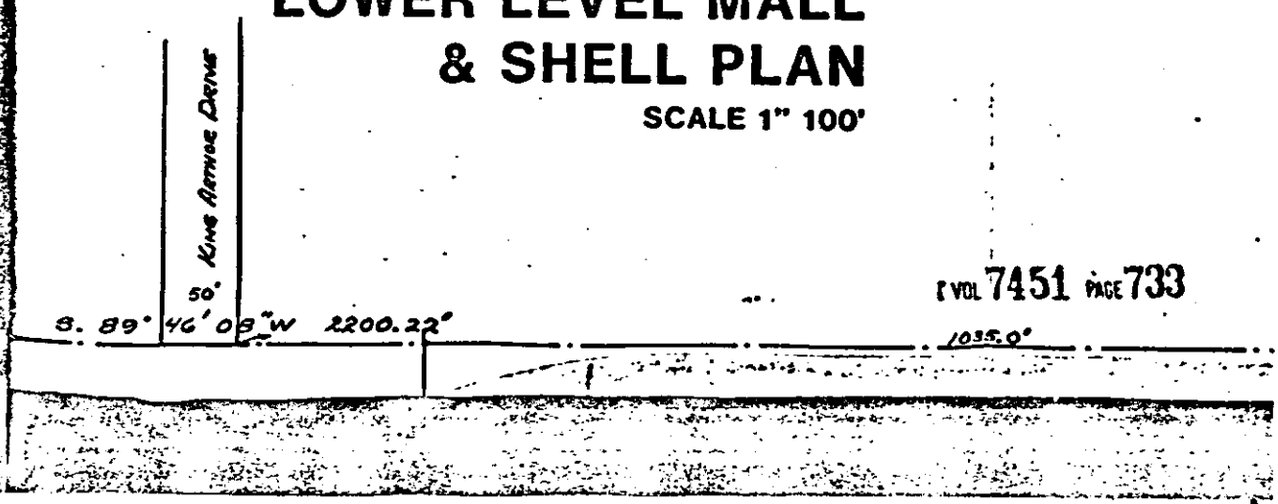


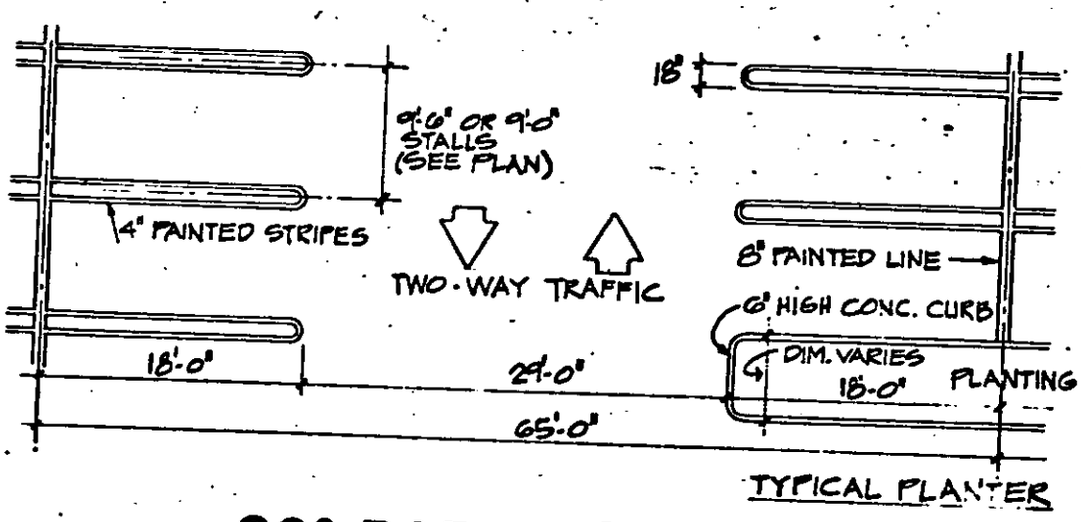


LOWER LEVEL MALL & SHELL PLAN

SCALE 1" 100'

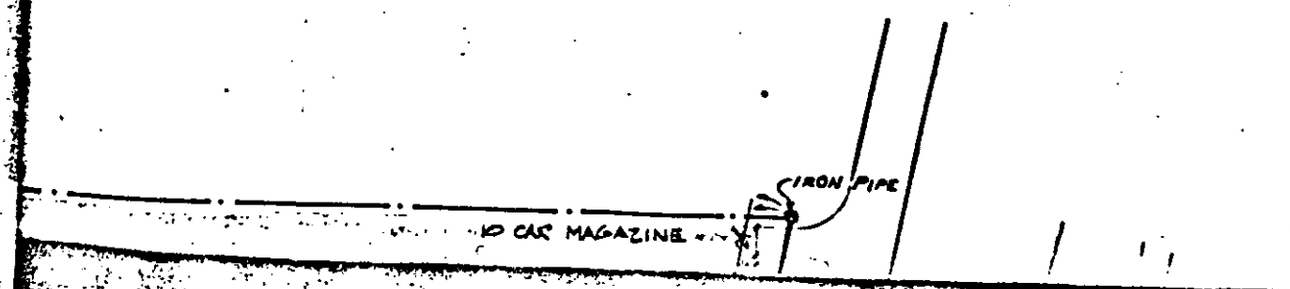
VOL 7451 PAGE 733

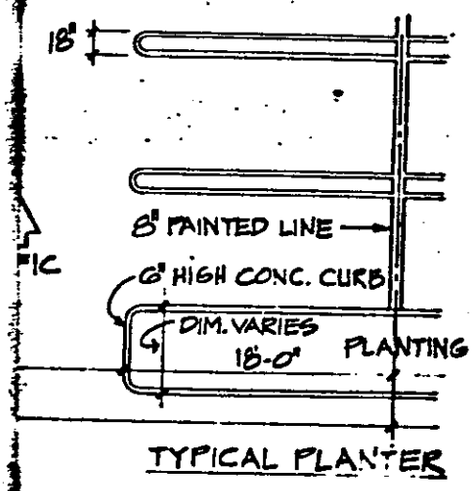




90° PARKING

STANDARD HAIRPIN LAYOUT
SCALE 3/32" = 1'-0"





I. SITE: 73.98 ACRES

II. BUILDINGS:

A. DILLARD'S	1st Level 2nd Level
B. PENNEY	1st Level 2nd Level Penthouse
FUT. EXP. 5,760 SQ.FT.	T.B.A.
C. MONTGOMERY WARD FUT. EXP. 4,258 SQ. FT.	1st Level 2nd Level T.B.A. PENTHOUSE
D. JOSKE'S DEPARTMENT STORE	1st Level 2nd Level Penthouse
SMALL SHOPS ("O" SECTION)	Lower Level Upper Level

III. PARKING

A. PARKING SPACES	900 Parking 900 Parking 900 Parking 600 Parking

B. RATIO OF PARKING SPACES TO GROSS LEASEAB

NOTE:

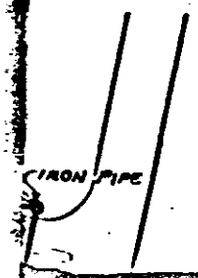
PENNEY PERMITTED TO EXPAND ADDITION
WARD " " " "

A. Developer covenants and warrants that no easem MENT AND OPERATING AGREEMENT, to which this Pl ing their Sites to the respective Department St

B. The parties agree that parking layout and deta not affecting car count, circulation or parkin ment Stores. All interior traffic signs, marki ment Stores.

C. The parties agree that all Sewers, Mains and Li between the Department Store Main Store Buildi

D. Developer agrees that final overall design of A lighting, clear story ceiling heights, dimensic



G

1st Level	89,551 Sq.Ft.		
2nd Level	89,576 Sq.Ft.	TOTAL	179,127 Sq.Ft.
1st Level	76,421 Sq.Ft.		
2nd Level	75,396 Sq.Ft.		
Penthouse	7,076 Sq.Ft.		
T.B.A.	15,744 Sq.Ft.	TOTAL	174,637 Sq.Ft.
1st Level	87,000 Sq.Ft.		
2nd Level	87,000 Sq.Ft.		
T.B.A.	23,742 Sq.Ft.		
Penthouse	2,803	TOTAL	200,545 Sq.Ft.
1st Level	65,144 Sq.Ft.		
2nd Level	62,644 Sq.Ft.		
Penthouse	3,124 Sq.Ft.	TOTAL	130,912 Sq.Ft.
N) Lower Level	182,111 Sq.Ft.		
Upper Level	176,560 Sq.Ft.	TOTAL	358,671 Sq.Ft.
	TOTAL BLDG. AREA		1,043,892 Sq.Ft.
	TOTAL GROSS LEASABLE AREA		1,030,889 Sq.Ft.

REVISIONS		
NO.	DATE	
1	7-17-74	B.S.
2	8-20-74	
3	9-5-74	

90° Parking	9'-6"	Stalls @ 65'-0"	3278	
90° Parking	9'-0"	Stalls @ 65'-0"	1176	TOTAL PARKING SPACES
90° Parking	9'-0"	Stalls @ 63'-0" (Lower Level)	592	5218 CARS
60° Parking	9'0"	Stalls	172	

TO GROSS LEASEABLE AREA 5.06 CARS/1000 SQ.FT. OF G.L.A.

EXPAND ADDITIONAL BUILDING (T.B.A.) UP TO & INCLUDING 5760 SQUARE FEET.
" " " " " " " " 4,258 " " S.F.

NOTES

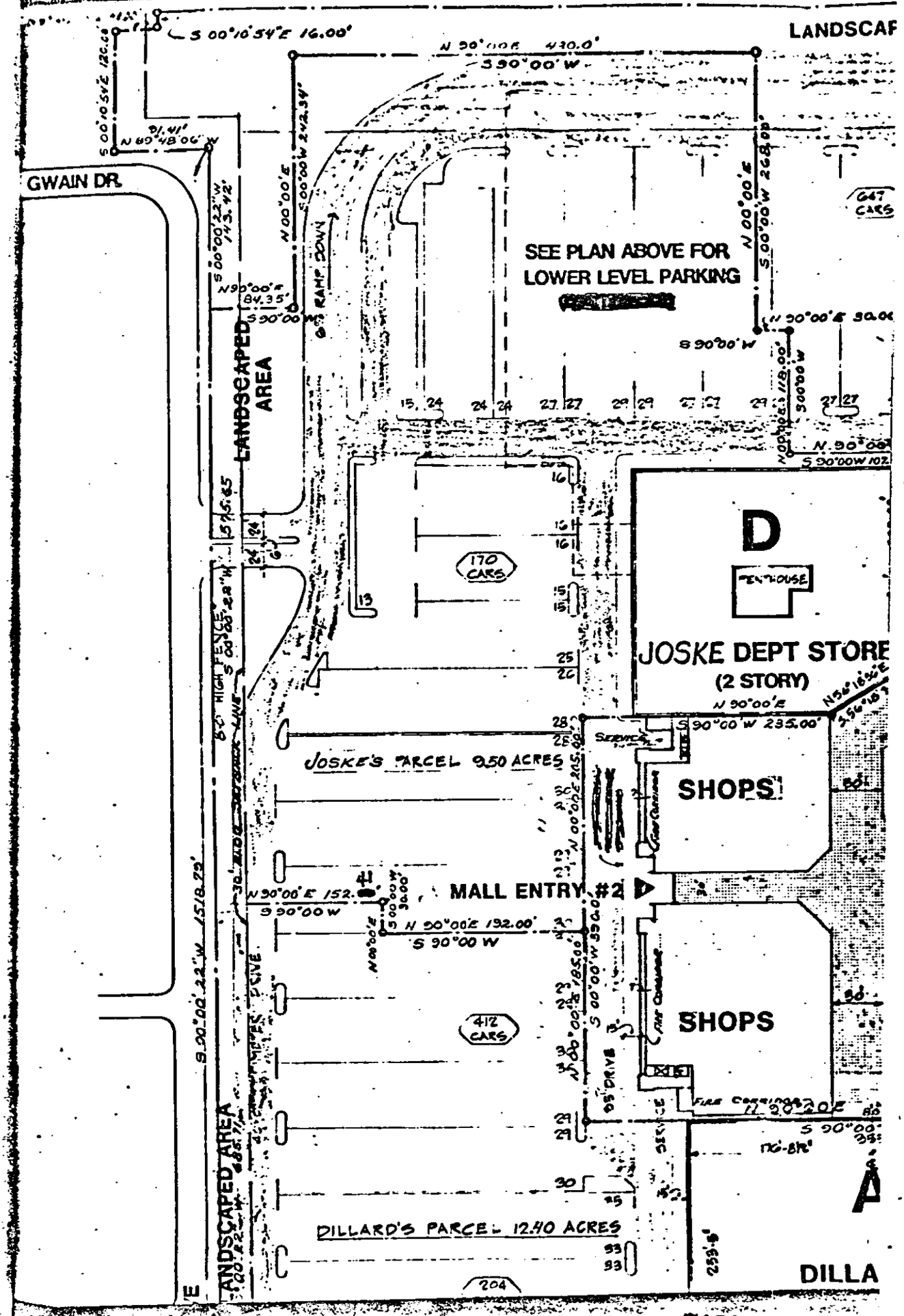
its that no easements affect the Entire Premises other than as set forth in the EASE-
to which this Plot Plan is attached and other than as set forth in the deeds convey-
ive Department Stores.

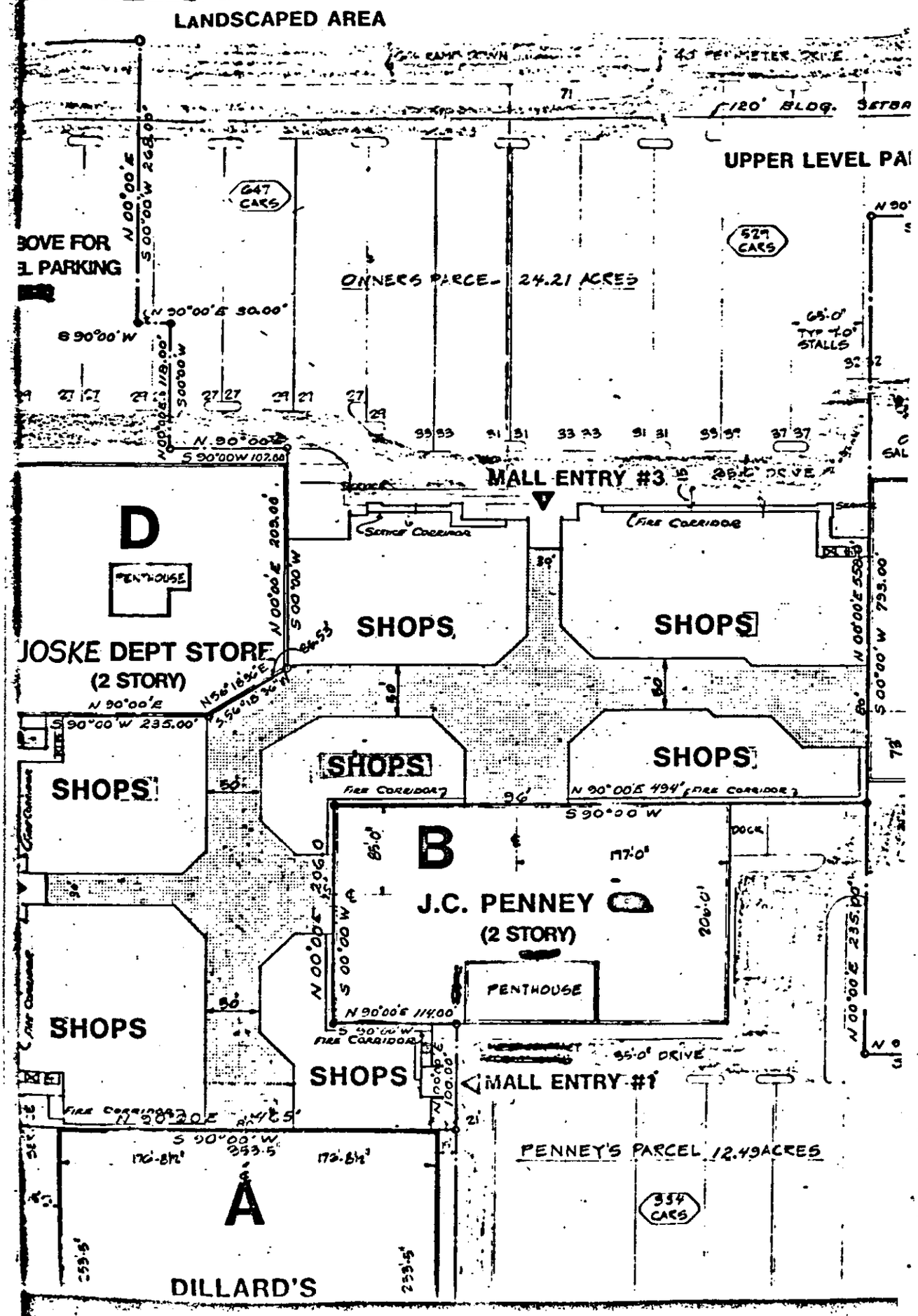
layout and detail, if it departs from that shown hereon except for minor changes
lation or parking ratio, are subject to the prior written approval of the Depart-
ffic signs, markings, etc. are subject to the prior written approval of the Depart-

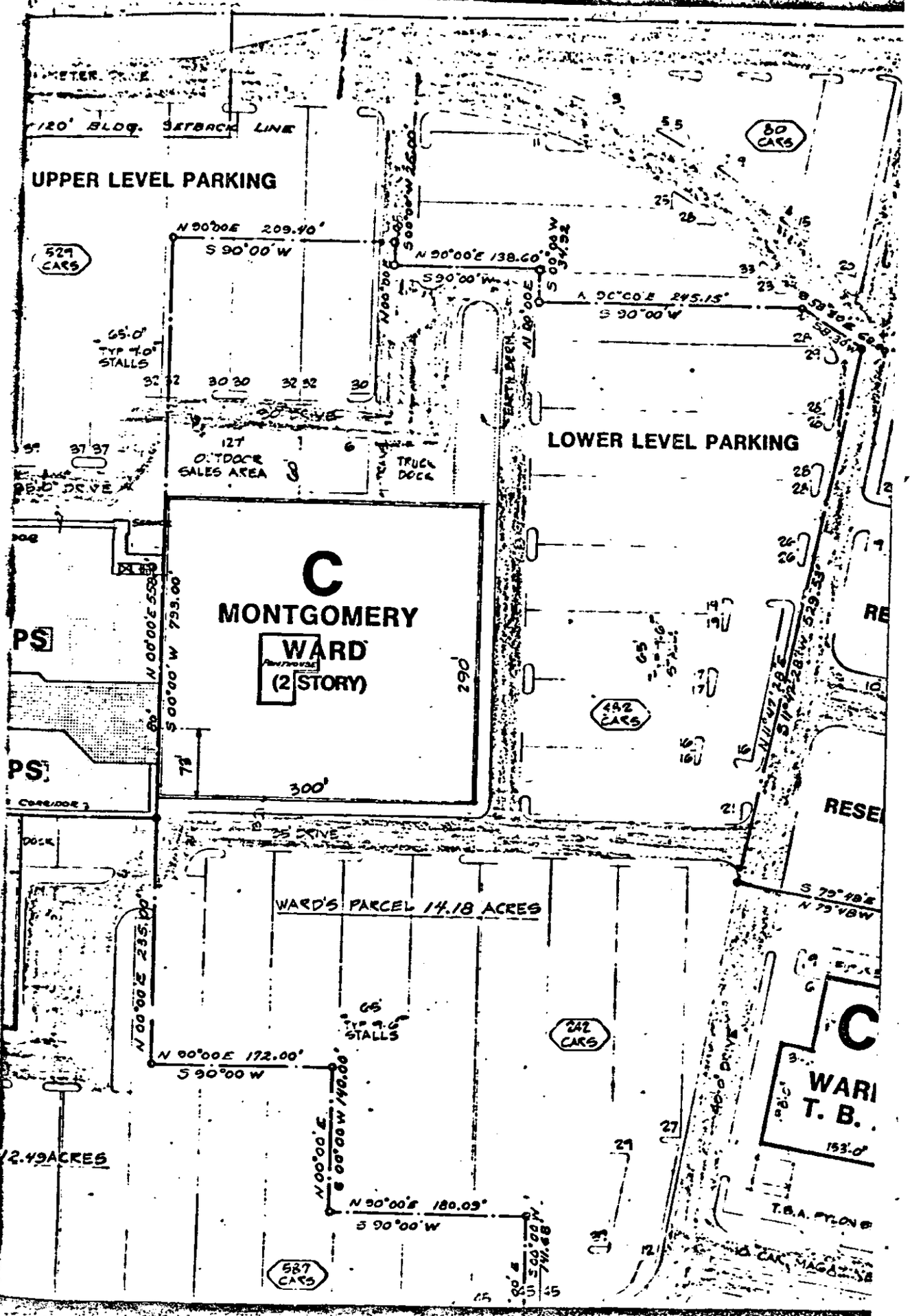
ers, Mains and Lines in the Shopping Center, shall be underground (including those
in Store Buildings and Additional Buildings).

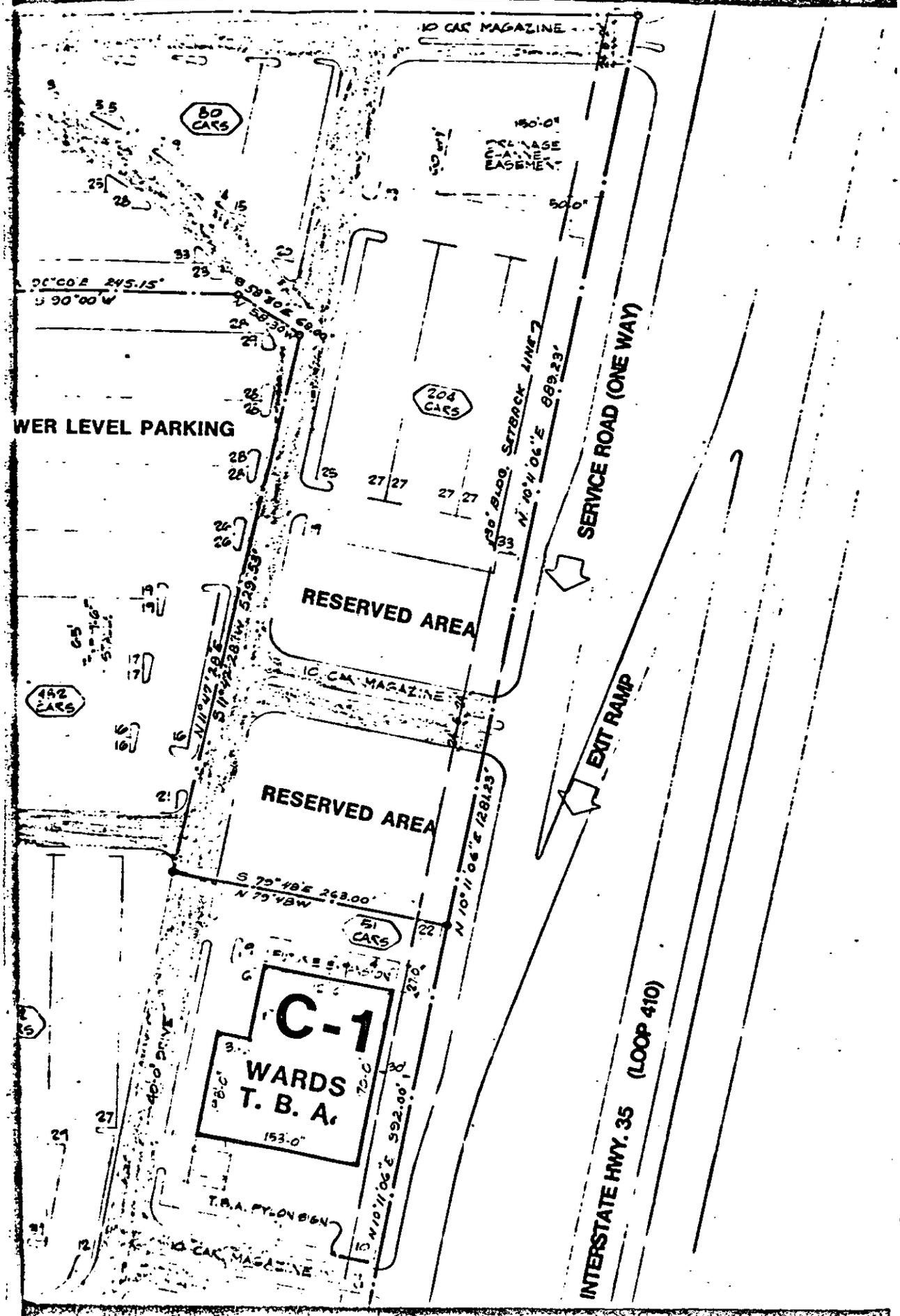
rall design of Air Conditioned Mall, including, without limitation, general decor,
heights, dimensions, all materials, signs (other than flat lettered store signs at-

RULE FOR DEFINITION OF "FLOOR AREA" SEE SECTION 7 OF EASEMENT AND OPERATING AGREEMENT.


LANDSCAP
GWAIN DR
SEE PLAN ABOVE FOR
LOWER LEVEL PARKING
LANDSCAPED AREA
RAMP DOWN
170 CARS
D
PENTHOUSE
JOSKE DEPT STORE
(2 STORY)
JOSKE'S PARCEL 9.50 ACRES
SHOPS
MALL ENTRY #2
412 CARS
SHOPS
DILLARD'S PARCEL 12.40 ACRES
LANDSCAPED AREA
DILLA
VOL 7451 PAGE 737


LANDSCAPED AREA
120' BLDG. SETBA
UPPER LEVEL PA
647 CARS
529 CARS
OWNERS PARCEL 24.21 ACRES
N 90°00'E 30.00'
S 90°00'W
N 00°00'E 268.00'
S 00°00'W
N 90°00'E
S 90°00'W 102.88
MALL ENTRY #3
D
PENTHOUSE
JOSKE DEPT STORE
(2 STORY)
N 00°00'E 203.00'
S 00°00'W
N 56°18'36"E
S 56°18'36"W
N 90°00'E
S 90°00'W 235.00'
SHOPS
SHOPS
SHOPS
SHOPS
SHOPS
SHOPS
SHOPS
SHOPS
FIRE CORRIDOR
SERVICE CORRIDOR
N 00°00'E 595.00'
S 00°00'W 795.00
N 90°00'E 494'
S 90°00'W
B
J.C. PENNEY
(2 STORY)
PENTHOUSE
N 90°00'E 114.00
S 90°00'W
N 00°00'E
S 00°00'W
N 00°00'E 235.00'
DOCK
85'-0" DRIVE
MALL ENTRY #1
S 90°00'W 353.5
PENNEY'S PARCEL 12.49 ACRES
354 CARS
A
DILLARD'S


120' BLDG. SETBACK LINE
UPPER LEVEL PARKING
529 CARS
N 90°00'E 209.40'
S 90°00'W
N 90°00'E 138.60'
S 90°00'W
N 90°00'E 245.15'
S 90°00'W
80 CARS
65.0' TYP 9.0' STALLS
127' OUTDOOR SALES AREA
TRUCK DOCK
LOWER LEVEL PARKING
C
MONTGOMERY WARD
(2 STORY)
290'
300'
78'
N 00°00'E 793.00'
S 00°00'W
242 CARS
35' DRIVE
WARD'S PARCEL 14.18 ACRES
N 00°00'E 235.00'
N 00°00'E 172.00'
S 90°00'W
N 00°00'E
S 00°00'W 140.00'
N 90°00'E 180.09'
S 90°00'W
65' TYP 9.0' STALLS
242 CARS
12.49 ACRES
587 CARS
S 79°48'E
N 79°48'W
WARD T. B.
153.0'
T.B.A. PYLON
OAK MAGAZINE


10 CAR MAGAZINE
80 CARS
DRAINAGE EASEMENT
204 CARS
WER LEVEL PARKING
30' BLDG. SETBACK LINE
N 10°11'06"E 889.23'
SERVICE ROAD (ONE WAY)
RESERVED AREA
10 CAR MAGAZINE
482 CARS
EXIT RAMP
RESERVED AREA
S 79°48'E 263.00'
N 79°48'W
N 10°11'06"E 128.23'
51 CARS
C-1
WARDS
T. B. A.
153'-0"
40'-0" DRIVE
N 10°11'06"E 992.00'
T.B.A. PYLON SIGN
10 CAR MAGAZINE
INTERSTATE HWY. 35 (LOOP 410)

D. Developer agrees that final overall design of Air Con lighting, clear story ceiling heights, dimensions, al tached to building fronts provided such signs do not planters and other ornamental furnishings, benches, s subject to the prior written approval of the Departme

E. Developer agrees that the location and decorative scr ment Stores' prior written approval.

F. The parties agree that no roof mounted equipment will The parties agree to provide parapets high enough to respective buildings and agree to provide additional and other major equipment. The parties agree that al and subject to the Department Stores' prior written a

G. Developer covenants and agrees that the preliminary a cluding, without limitation, the Air Conditioned Mall submitted to the Department Stores for their prior wr system in remote Landscaped Areas may have hydrants approval.

H. It is understood and agreed that all approval rights the Termination Date of this Agreement as to the ent

I. Developer covenants and warrants that no setback lin specifically shown on this Plot Plan.

J. Developer covenants and agrees that the Parking Area catch basins; maximum 3% slope; and maximum 5% slope Design Plan.

K. Developer agrees to provide as a minimum heavy duty in the Shopping Center and medium duty pavement else practices.

L. Developer agrees to provide water supply and pressur (including, without limitation, water towers, if req and the Department Stores.

M. The location and placement of fences, screens, trans of the Department Stores.

N. Developer agrees that all paving shall be curbed to curbed by the time the Shopping Center is opened for cost and expense, to provide a finished appearance t

O. The location of signs is governed by the provisions

P. Open storm drains are not permitted in the Shopping cally agreed to by the Department Stores and then c conditions do exist, they must be clearly indicated will be made by Developer to eliminate such open st

Q. Developer agrees that all property controlled by it Center will be maintained in accordance with the pr

R. No building or buildings except the Department Stor Plan and/or Design Plan) shall be higher than the l Store Building or 40'-00", except for central court

S. The parties agree that the Parking Area lighting sh throughout at all times except from a time one (1) daylight when the illumination for the Parking Area the number of lighting units installed in the Parki

T. No kiosks are permitted in the common facilities, e not exceed 9 feet in total height including signs, of 10 feet in width by 20 feet in length. The loca less than 150 feet from any Department Store Main S

U. THE WORDS T.B.A. ON THIS PLAN REFERS TO THE

(LOOP 410)

erall design of Air Conditioned Mall, including, without limitation, general decor, heights, dimensions, all materials, signs (other than flat lettered store signs at-ided such signs do not flash, scintillate, make noise or emit smoke), location of furnishings, benches, stairways, escalators, kiosk courts or plazas and columns are pproval of the Department Stores.

ation and decorative screening of trash and receiving areas are subject to the Depart-proval.

f mounted equipment will be exposed on any of the buildings in the Shopping Center. parapets high enough to screen miscellaneous vents and equipment from view on their e to provide additional building screens as may be required around all cooling towers he parties agree that all equipment and services at grade will be properly screened Stores' prior written approval.

s that the preliminary and final landscape plans showing planting of all areas (in-the Air Conditioned Mall, sidewalks, parking areas, driveways and parkway) shall be stores for their prior written approval; it is understood, however, that the sprinkler reas may have hydrants provided the Department Stores have given their prior written

that all approval rights of the Department Stores set forth herein shall apply until Agreement as to the entire Shopping Center.

ants that no setback lines are required to be maintained in the Shopping Center unless lot Plan.

es that the Parking Areas shall have minimum 1½ slope (preferably 2% slope) to storm pe; and maximum 5% slope at truck docks unless otherwise specifically shown on the

as a minimum heavy duty pavement for all truck dock areas, access roads and driveways edium duty pavement elsewhere in the Shopping Center. This design to be per local

water supply and pressure adequate for all sprinkler requirements in the Shopping Center on, water towers, if required) in accordance with the requirements of Factory Mutual

f fences, screens, transformer vaults, etc. are subject to the prior written approval

ving shall be curbed to provide finished appearance. Where adjacent streets are not ing Center is opened for business, these streets shall be curbed, at Developer's sole a finished appearance to the Shopping Center.

erned by the provisions of Exhibit H to this agreement.

rmitted in the Shopping Center or in the right-of-ways adjacent thereto unless specifi-rtment Stores and then only off-site when unusual street conditions exist. If such st be clearly indicated and noted on this Plot Plan and additional off-site improvements eliminate such open storm drains.

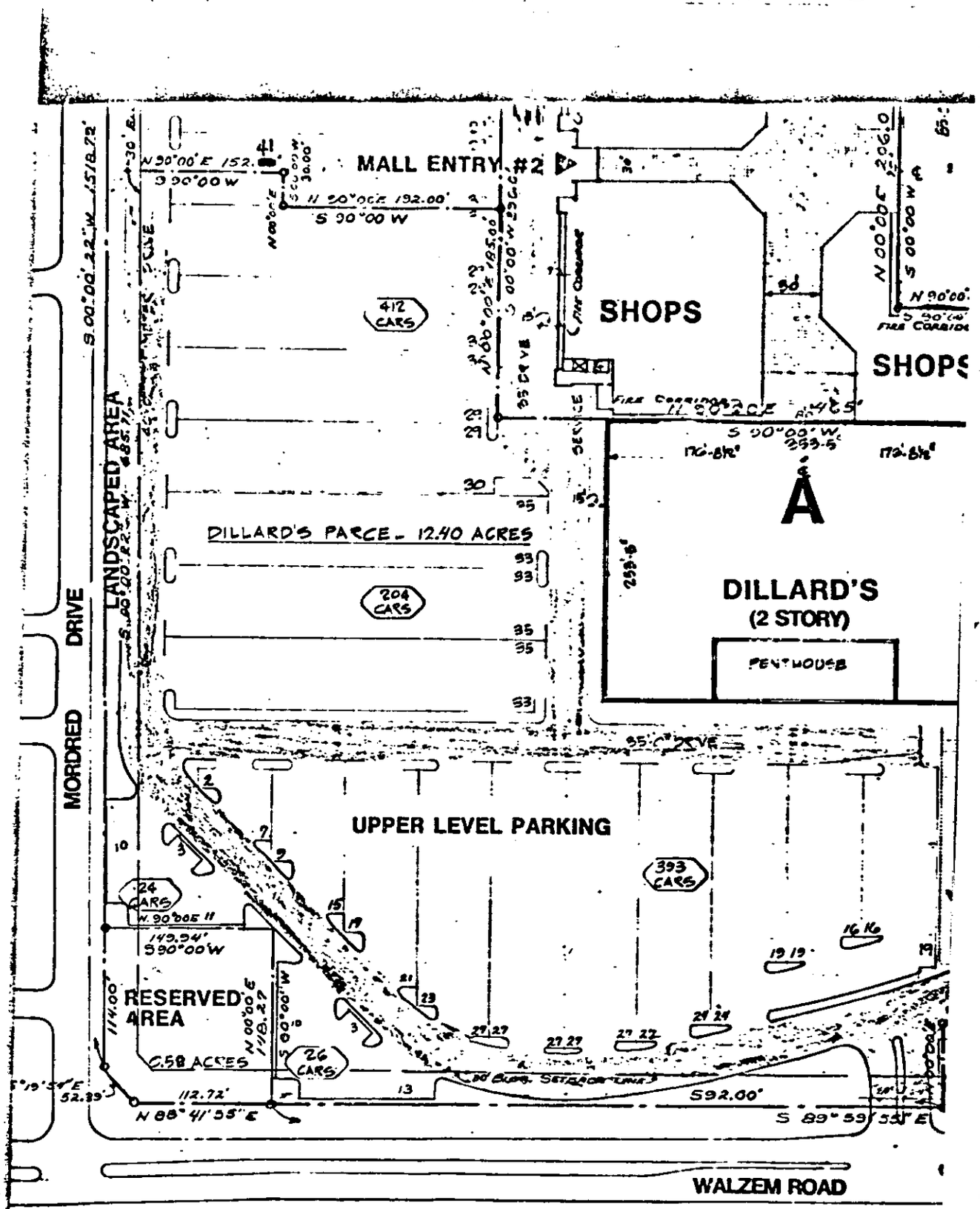
operty controlled by it (both directly and indirectly) within 500 yards of the Shopping accordance with the provisions of Section 2F of the Easement and Operating Agreement.

cept the Department Stores' Main Store Buildings (and except as indicated on the Plot all be higher than the lesser of the second floor exterior wall of the Penney Main xcept for central courts and malls.

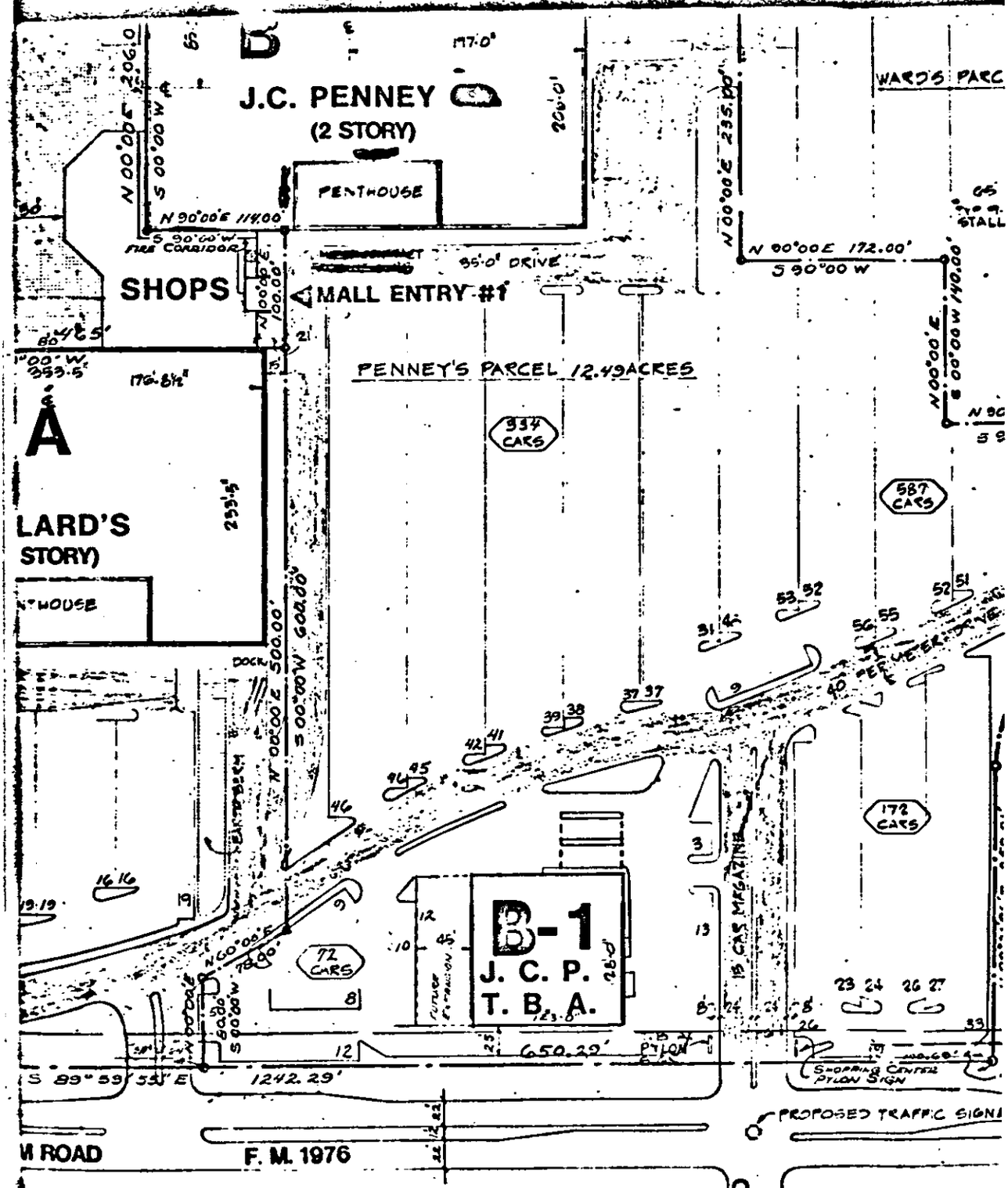
Parking Area lighting shall be one and one-half (1½) foot candles minimum maintained AT 30" ABOVE GROUND LEVEL pt from a time one (1) hour after closing and at all night time hours thereafter until ion for the Parking Area shall be provided by not less than twenty-five (25%)per cent of installed in the Parking Area uniformly distributed.

the common facilities, except in the air conditioned Mall and all such kiosks shall height including signs, or exceed 200 square feet in total area, and/or exceed dimensions eet in length. The location of all kiosks to be situated in the air conditioned mall Department Store Main Store Building shall first be approved by said Department Store.

PLAN REFERS TO THE "ADDITIONAL BUILDING" AS REFERRED TO THE OPERATING AGREEMENT.


MALL ENTRY #2
SHOPS
SHOPS
412 CARS
DILLARD'S PARCEL - 12.40 ACRES
204 CARS
DILLARD'S
(2 STORY)
PENTHOUSE
A
LANDSCAPED AREA
MORDRED DRIVE
UPPER LEVEL PARKING
393 CARS
24 CARS
RESERVED AREA
6.58 ACRES
26 CARS
WALZEM ROAD

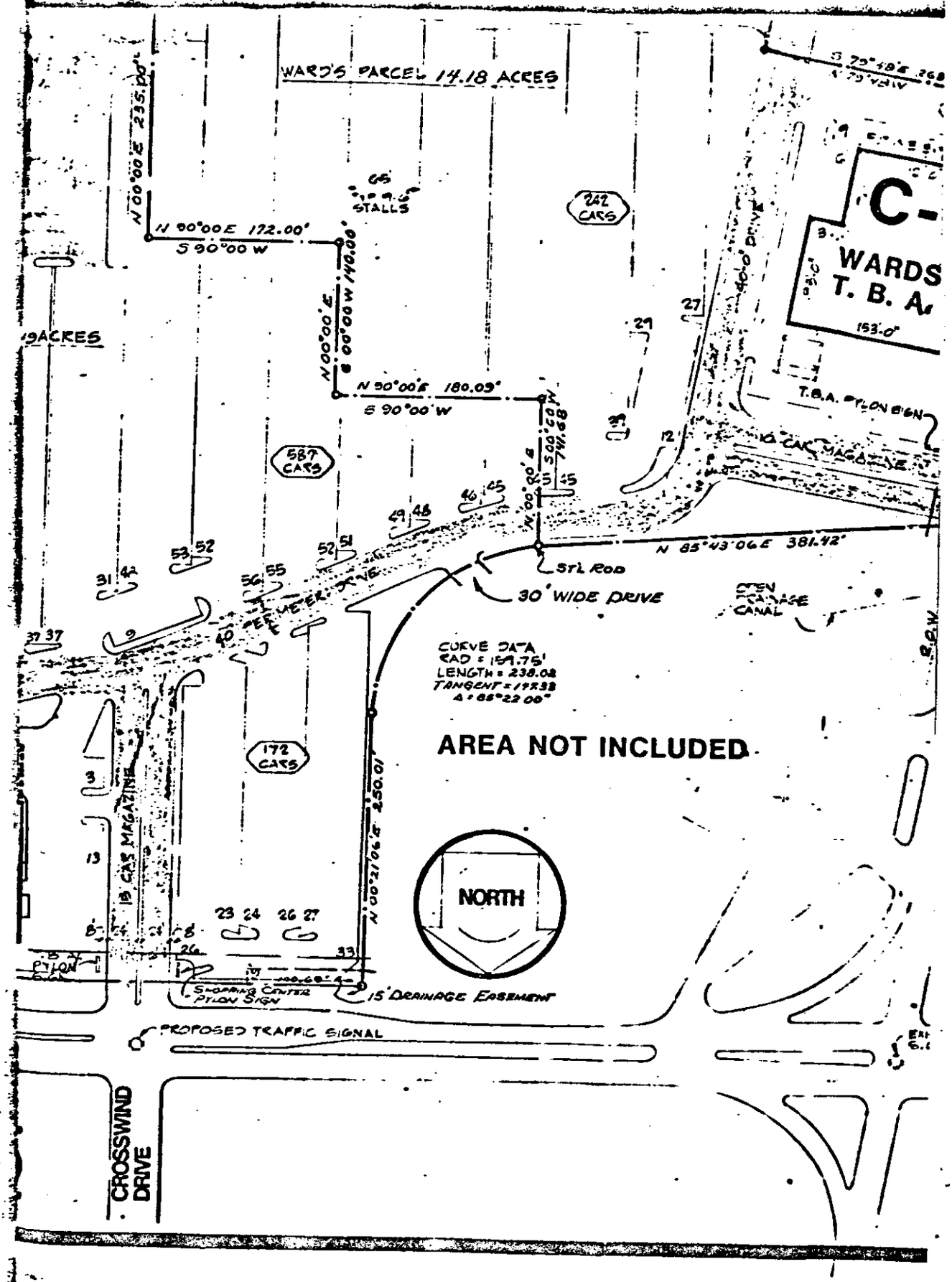
SITE PLAN

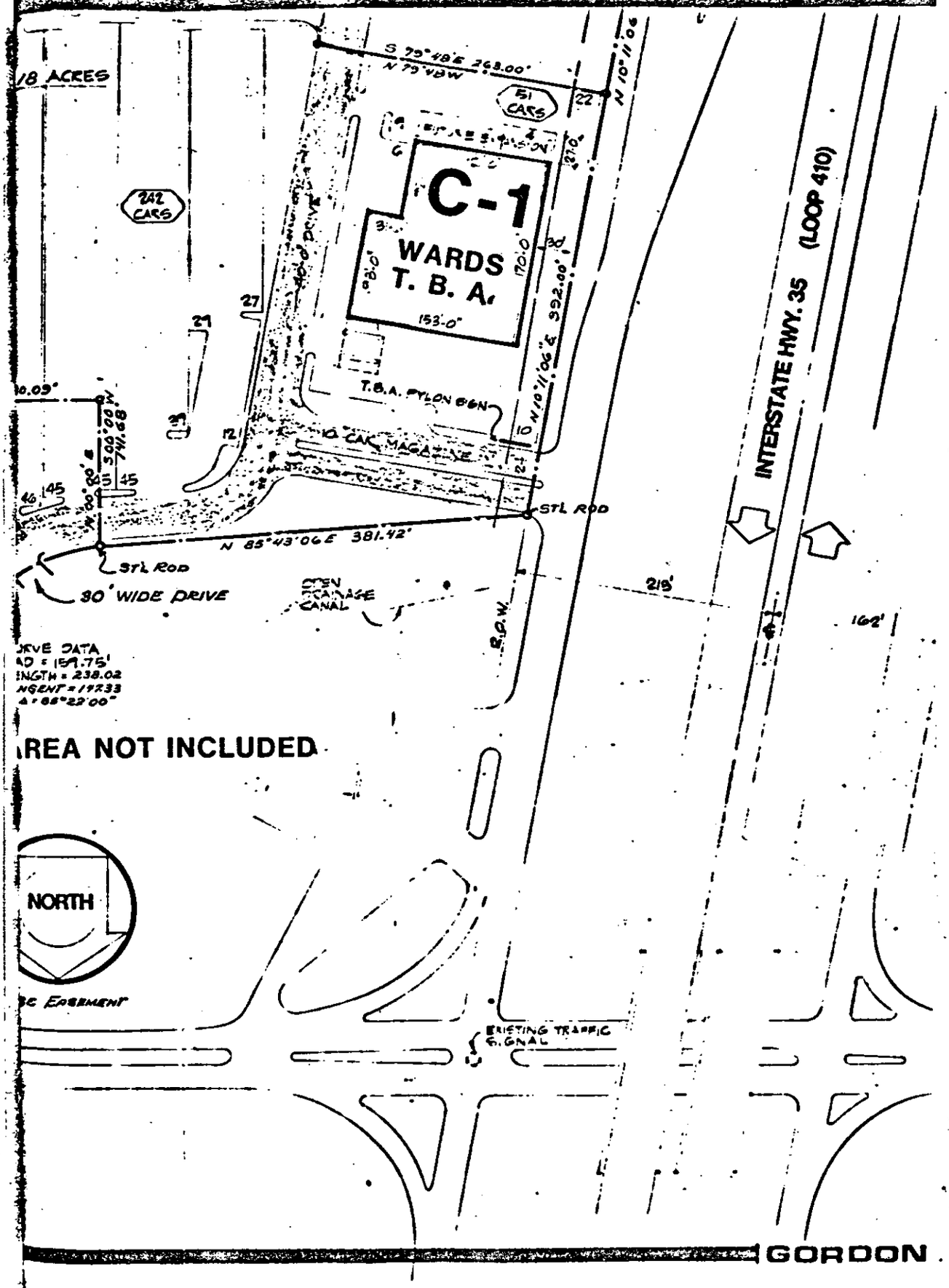


AN (UPPER LEVEL MALL & SHELL)

SCALE 1" = 100'

CROSSWIND DRIVE


WARD'S PARCEL 14.18 ACRES
N 00°00'E 235.00'
N 90°00'E 172.00'
S 90°00'W
N 00°00'E
S 00°00'W 140.00'
N 90°00'E 180.09'
S 90°00'W
65 STALLS
242 CARS
587 CARS
172 CARS
9 ACRES
C-
WARDS
T. B. A.
153.0'
T.B.A. PYLON SIGN
10 CAR MAGAZINE
N 85°43'06"E 381.42'
STL ROD
30' WIDE DRIVE
OPEN DRAINAGE CANAL
CURVE DATA
RAD = 159.75'
LENGTH = 238.08
TANGENT = 179.33
Δ = 85°22'00"
AREA NOT INCLUDED
NORTH
N 00°21'06"E 250.01'
15 CAR MAGAZINE
PYLON SIGN
SHOPPING CENTER PYLON SIGN
15' DRAINAGE EASEMENT
PROPOSED TRAFFIC SIGNAL
CROSSWIND DRIVE


18 ACRES
242 CARS
51 CARS
C-1
WARDS
T. B. A.
153'-0"
170'-0"
S 79°48'E 268.00'
N 79°48'W
N 10°11'06"E 392.00'
T.B.A. PYLON SIGN
10' CAR MAGAZINE
STL ROD
N 85°43'06"E 381.42'
30' WIDE DRIVE
OPEN DRAINAGE CANAL
R.O.W.
INTERSTATE HWY. 35 (LOOP 410)
219'
162'
AREA NOT INCLUDED
NORTH
EXISTING TRAFFIC SIGNAL
GORDON

P. Open storm drains are not permitted i
cally agreed to by the Department St
conditions do exist, they must be cle
will be made by Developer to eliminat

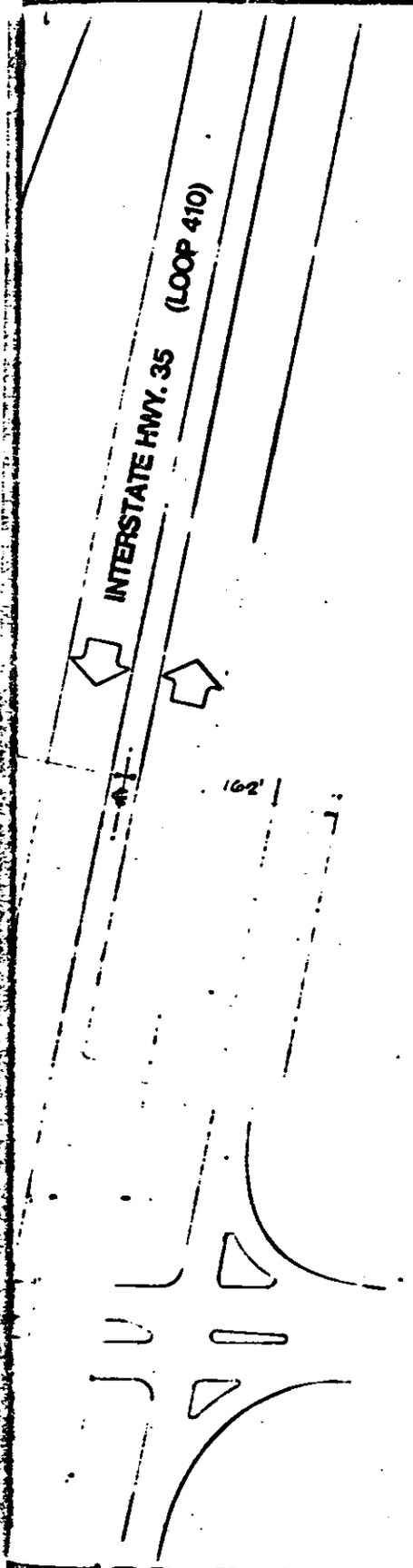
Q. Developer agrees that all property co
Center will be maintained in accordan

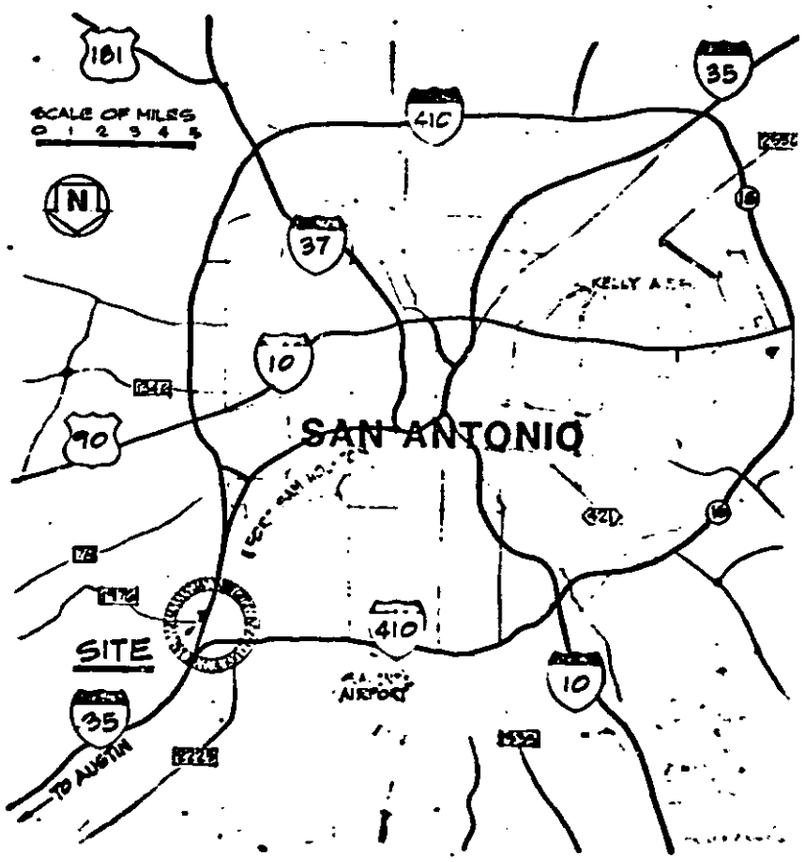
R. No building or buildings except the D
Plan and/or Design Plan) shall be hig
Store Building or 40'-00", except for

S. The parties agree that the Parking Ar
throughout at all times except from a
daylight when the illumination for th
the number of lighting units installec

T. No kiosks are permitted in the common
not exceed 9 feet in total height incl
of 10 feet in width by 20 feet in leng
less than 150 feet from any Department

U. THE WORDS T.B.R. ON THIS PLAN REFE





AREA MAP

VOL 7451 PAGE 747

GORDON SIBECK & ASSOCIATES INC. ARCHITE

P. Open storm drains are not permitted in the Shopping Center or in the right-of-ways adja cally agreed to by the Department Stores and then only off-site when unusual street co conditions do exist, they must be clearly indicated and noted on this Plot Plan and add will be made by Developer to eliminate such open storm drains.

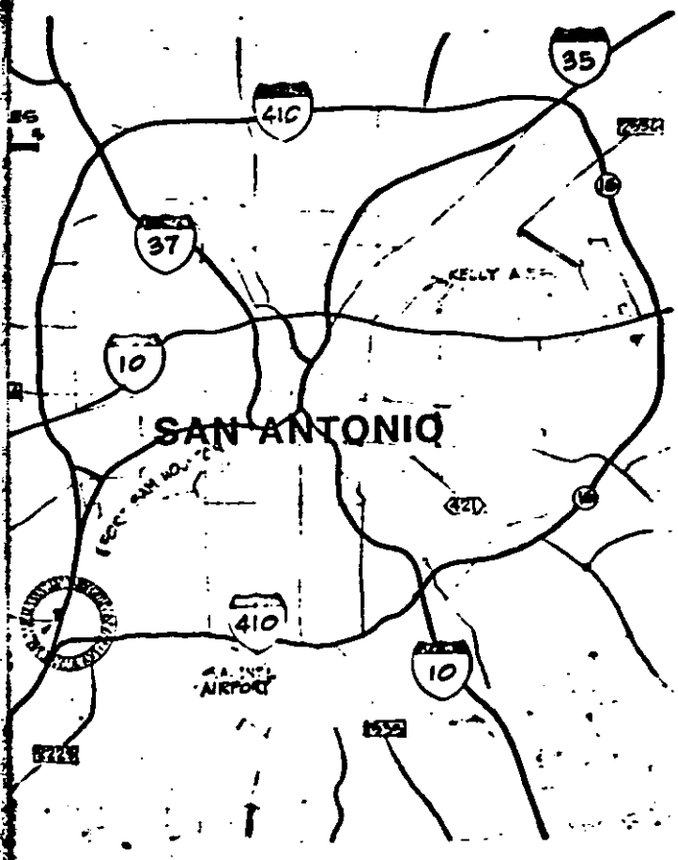
Q. Developer agrees that all property controlled by it (both directly and indirectly) with Center will be maintained in accordance with the provisions of Section 2F of the Easeme

R. No building or buildings except the Department Stores' Main Store Buildings (and except Plan and/or Design Plan) shall be higher than the lesser of the second floor exterior w Store Building or 40'-00", except for central courts and malls.

S. The parties agree that the Parking Area lighting shall be one and one-half (1½) foot ca throughout at all times except from a time one (1) hour after closing and at all night daylight when the illumination for the Parking Area shall be provided by not less than the number of lighting units installed in the Parking Area uniformly distributed.

T. No kiosks are permitted in the common facilities, except in the air conditioned Mall ar not exceed 9 feet in total height including signs, or exceed 200 square feet in total a off 10 feet in width by 20 feet in length. The location of all kiosks to be situated ir less than 150 feet from any Department Store Main Store Building shall first be approve

U. THE WORDS T.B.A. ON THIS PLAN REFERS TO THE "ADDITIONAL BUILDING" AS REFERR



AREA MAP

NOTE-

ARCHITECT & ENGINEER OF RE
ALL MATERIALS, DETAILS AND
SATISFY MELVIN SIMON & ASS
FACTORY MUTUAL REQUIREME
BUILDING CODES.

WINI
PARI
MALI

SAN ANTONIO, TEX

MELVIN
ASSOCIA

DEVELOPER

ASSOCIATES INC. ARCHITECTS - DALLAS, TEXAS

in the Shopping Center or in the right-of-ways adjacent thereto unless specifi-
Stores and then only off-site when unusual street conditions exist. If such
clearly indicated and noted on this Plot Plan and additional off-site improvements
hate such open storm drains.

controlled by it (both directly and indirectly) within 500 yards of the Shopping
dance with the provisions of Section 2F of the Easement and Operating Agreement.

e Department Stores' Main Store Buildings (and except as indicated on the Plot
higher than the lesser of the second floor exterior wall of the Penney Main
for central courts and malls.

Area lighting shall be one and one-half (1½) foot candles minimum maintained AT 30" ABOVE GROUND LEVEL
m a time one (1) hour after closing and at all night time hours thereafter until
the Parking Area shall be provided by not less than twenty-five (25%)per cent of
lled in the Parking Area uniformly distributed.

mon facilities, except in the air conditioned Mall and all such kiosks shall
including signs, or exceed 200 square feet in total area, and/or exceed dimensions
length. The location of all kiosks to be situated in the air conditioned mall
ment Store Main Store Building shall first be approved by said Department Store.

CEFERS TO THE "ADDITIONAL BUILDING" AS REFERRED TO THE OPERATING AGREEMENT.

NOTE-

ARCHITECT & ENGINEER OF RECORD WILL CONFIRM THAT ALL MATERIALS, DETAILS AND CONSTRUCTION METHODS WILL SATISFY MELVIN SIMON & ASSOCIATES DESIGN CRITERIA, FACTORY MUTUAL REQUIREMENTS AND ALL APPLICABLE BUILDING CODES.

WINDSOR PARK MALL

SAN ANTONIO, TEXAS

MELVIN SIMON & ASSOCIATES INC.

DEVELOPER INDIANAPOLIS

HITECTS-DALLAS, TEXAS

JOB NO	DATE	DWG. NO
7116	4/12/74	DD-1

VOL 7451 PAGE 749

EXHIBIT "H"

SIGN CRITERIA FOR ENTIRE PREMISES

1. There shall be no flashing, rotating or moving signs or markers of any type.

2. There shall be no signs painted on the exterior surface of any building, except to the extent permitted under paragraph 4.

3. There shall be no free-standing or pylon signs other than (i) a pylon sign(s) to be erected and maintained by Developer at the location(s) shown therefor on the Plot Plan and which shall display only the name of the Shopping Center, and (ii) a pylon sign which may be erected by Penney and Ward in connection with their Additional Buildings; provided, however, that one (1) free-standing theatre reader-board shall be permitted on the Entire Premises with the proviso that the location, height, dimensions, design and lighting (if any) shall be first subject to the approval of the Department Stores which approval may be reasonably or unreasonably withheld.

4. All signs which front on the Air Conditioned Mall, or any other mall, shall be (i) not more than four (4') feet in height, except in the case of any building having two (2) or more floors above ground level, (ii) approximately flush with the wall of the building to which affixed, (iii) of a length which does not exceed 80% of the linear frontage of the store upon which it fronts, and (iv) of a design which is uniform with other signs similarly placed.

5. Signs which are under building canopies shall be (i) at right angles to the store front, (ii) of a design which is uniform with other signs similarly placed under building canopies, and (iii) not more than four and one-half (4½') feet wide and twelve (12") inches high.

6. There shall be no roof-top signs except that signs affixed to the sides of Department Stores' mechanical equipment penthouses shall not be considered roof-top signs.

7. No signs will be permitted at the rear of any buildings, except in the case of stores with customer entrances opening directly on to the parking areas.

Attached to and forming part of Easement and Operating Agreement dated SEPT. 10, 1974, by and between Windsor Park Development Company, J. C. Penney Properties, Inc., Montgomery Ward Development Corporation, Dillard Department Stores, Inc., Construction Developers, Incorporated, Alstores Realty Corporation, and Allied Stores of Texas, Inc. covering Windsor Park Mall Shopping Center, San Antonio, Texas.

Initialed by:	Initialed by:	Initialed by:
Developer BY [illegible]	Penney BY [illegible]	Ward BY [illegible]
DDSI BY [illegible]	Cordry BY [illegible]	Alstores BY [illegible]
Jonko BY [illegible]		

ORIGINAL DIM

EXHIBIT "J"

DESCRIPTION OF THE JOSUE SITE

A 9.50 acre tract of land out of the Gertrude Rodriguez Survey No. 132, being a portion of Lot 21, N.C.B. 12190 out of Simon Subdivision as recorded in Volume 7300 page 69 & 70 and being more fully described by metes and bounds as follows:

Commencing at a point on the east R.O.W. line of Interstate Highway (Loop 410) 35 said point being S 10°11'06" E, 475.30 feet from the intersection of the east R.O.W. line of said IH 35 extended and the south R.O.W. line of FM (Walzem) Road 1976 extended;

Thence N 85°43'06" E, 381.42 feet along a common line between Lot 21 and Lot 22 to a point of curvature of a curve to the left;

Thence 238.02 feet along said curve to the left having a central angle of 85°22'00", a radius of 159.75 feet and a tangent of 147.33 feet to a point of tangent;

Thence N 00°21'06" E, 250.01 feet along a line to a point on the south R.O.W. line of FM (Walzem) Road 1976 for a corner;

Thence S 89°59'55" E, 1242.29 feet along the south R.O.W. of said Walzem Road to a point for a corner;

Thence N 88°41'55" E, 112.72 feet continuing along said R.O.W. line to a point for a corner;

Thence S 45°19'54" E, 52.39 feet along a line to a point on the west R.O.W. line of Mordred Drive for a corner;

Thence S 00°00'22" W, 799.71 feet along said R.O.W. line to the place of beginning;

Thence Continuing S 00°00'22" W, 575.66 feet to a point for a corner;

Thence S 90°00' W, 84.35 feet to a point for a corner;

Thence S 00°00' W, 242.34 feet to a point for a corner;

Thence S 90°00' W, 430.00 feet to a point for a corner;

Thence N 00°00' E, 268.00 feet to a point for a corner;

Thence S 90°00' W, 30.00 feet to a point for a corner;

Thence N 00°00' E, 118.00 feet to a point for a corner;

Thence S 90°00' W, 107.00 feet to a point for a corner;

Thence N 00°00' E, 209.00 feet to a point for a corner;

Thence N 56°18'36" E, 86.53 feet to a point for a corner;

Thence N 90°00' E, 235.00 feet to a point for a corner;

Thence N 00°00' E, 205.00 feet to a point for a corner;

Thence N 90°00' E, 192.00 feet to a point for a corner;

Thence S 00°00' W, 30.00 feet to a point for a corner;

Thence N 90°00' E, 152.41 feet to the place of beginning and containing 9.50 acres more or less.

VOL 7451 PAGE 751

Attached to and forming part of Easement and Operating Agreement dated September 10, 1974, by and between Windsor Park Development Company, J. C. Penney Properties, Inc., Montgomery Ward Development Corporation, Dillard Department Stores, Inc., Construction Developers, Incorporated, Alstores Realty Corporation, and Allied Stores of Texas, Inc. covering Windsor Park Mall Shopping Center, San Antonio, Texas.

Initialed by:	Initialed by:	Initialed by:
Developer	Penney	Ward
BY	BY	BY
DDSI	Condev	Alstores
BY	BY	BY
Joske		
BY		

GUARANTY

KNOW ALL MEN, that:

For value received, in consideration of the sum of One ($1.00) Dollar paid by each of the Department Stores (as said term is defined in the foregoing Easement and Operating Agreement) to the undersigned, receipt whereof is hereby acknowledged, and in consideration for, and as an inducement to the Department Stores entering into the foregoing Easement and Operating Agreement among WINDSOR PARK DEVELOPMENT COMPANY ("Developer"), J. C. PENNEY PROPERTIES, INC., MONTGOMERY WARD DEVELOPMENT CORPORATION, DILLARD DEPARTMENT STORES, INC., CONSTRUCTION DEVELOPERS, INCORPORATED, ALSTORES REALTY CORPORATION and ALLIED STORES OF TEXAS, INC., the undersigned, for itself and its successors in interest and assigns, hereby guarantees to each of the Department Stores, their respective successors and assigns, the full and faithful performance and observation by Developer of all of the covenants, conditions and agreements therein provided to be performed and observed by Developer, together with the payment of all costs, attorneys' fees and other expenses incurred by the Department Stores in enforcing such performance and observance, without requiring any notice of non-payment, non-performance or non-observance or proof of notice of demand whereby to charge the undersigned therefor, all of which the undersigned hereby expressly waives and expressly agrees that the validity of this Guaranty and the obligations of the undersigned hereunder shall in nowise be terminated, affected or impaired by reason of assertion by any one or more of the Department Stores against Developer of any of the rights or remedies reserved to the Department Stores pursuant to said Easement and Operating Agreement.

The undersigned expressly agrees that the Department Stores may, without notice to the undersigned, modify said Easement and Operating Agreement with Developer and grant extensions and concessions to Developer in respect thereof without in any manner affecting the liability of the undersigned hereunder.

The liability of the undersigned hereunder is primary and may be enforced by any one or more of the Department Stores before or after proceeding against Developer and shall not be subject to deduction for any claim of offset, counterclaim or defense which Developer may have against any one or more of the Department Stores.

As a further inducement to the Department Stores to enter into said Easement and Operating Agreement and in consideration thereof, the undersigned covenants and agrees that in any action or proceeding brought by any one or more of the Department Stores against the undersigned on account of this Guaranty the undersigned shall and does hereby waive trial by jury.

This Guaranty shall lapse and become of no further force and effect when Developer completes construction of all improvements required to be constructed and opens

VOL 7451 PAGE 753

same for business as provided in said Easement and Operating Agreement.

The undersigned hereby waives notice of acceptance of this Guaranty.

Dated: September 10, 1974.

MELVIN SIMON & ASSOCIATES, INC.

ATTEST:

BY

Chairman of the Board

Secretary

STATE OF Indiana
COUNTY OF Marion } SS.:

On this the 16th day of September, 1974, before me, a Notary Public duly authorized in and for the said County in the State aforesaid to take acknowledgments, personally appeared Melvin Simon, residing at 1712 N Meridian Street, Indianapolis, Indiana, to me known and known to me to be Chairman of the Board of MELVIN SIMON & ASSOCIATES, INC., one of the corporations described in the foregoing instrument, and acknowledged that as such officer, being authorized so to do, he executed the foregoing instrument on behalf of said corporation by subscribing the name of such corporation by himself as such officer and caused the corporate seal of said corporation to be affixed thereto, as his free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires:
12-21-75

Notary Public

GUARANTY

KNOW ALL MEN, that:

For value received, in consideration of the sum of One ($1.00) Dollar paid by MONTGOMERY WARD DEVELOPMENT CORPORATION ("Ward"), DILLARD DEPARTMENT STORES, INC. ("Dillard") and ALLIED STORES OF TEXAS, INC. ("Joske") (for purposes of this Guaranty, Ward, Dillard and Joske are collectively referred to as the "Department Stores") and WINDSOR PARK DEVELOPMENT COMPANY ("Developer") to the undersigned, receipt whereof is hereby acknowledged, and in consideration for, and as an inducement to the Department Stores and Developer to enter into the foregoing Easement and Operating Agreement with J. C. Penney Properties, Inc. ("Penney Properties"), the undersigned, for itself and its successors in interest and assigns, hereby guarantees to the Department Stores and Developer, their respective successors and assigns, the full and faithful performance and observation by Penney Properties of the covenants, conditions and agreements therein provided, to be performed and observed by Penney Properties, together with the payment of all costs, attorneys' fees and other expenses incurred by the Department Stores and/or Developer in enforcing such performance and observance, without requiring any notice of non-performance or non-observance or proof of notice or demand whereby to charge the undersigned therefor, all of which the undersigned hereby expressly waives and expressly agrees that the validity of this Guaranty and the obligations of the undersigned hereunder shall in nowise be terminated, affected or impaired by reason of assertion by the Department Stores and/or Developer against Penney Properties of any of the rights or remedies reserved to the Department Stores and/or Developer pursuant to said Operating Agreement.

The undersigned expressly agrees that the Department Stores and Developer may, without notice to the undersigned, modify said Easement and Operating Agreement by agreement with Penney Properties and grant extensions and concessions to Penney Properties in respect thereof without in any manner affecting the liability of the undersigned hereunder.

As a further inducement to the Department Stores and Developer to enter into said Easement and Operating Agreement and in consideration thereof, the undersigned covenants and agrees that in any action or proceeding brought by the Department Stores and/or Developer against the undersigned on account of this Guaranty the undersigned shall and does hereby waive trial by jury.

The undersigned hereby waives notice of acceptance of this Guaranty.

Dated: Sept. 10, 1974

J. C. PENNEY COMPANY, INC.

BY _____
Vice President

Attest: _____
Assistant Secretary

APPROVED
ATTORNEY

VOL 7451 PAGE 755

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

On this the 18th day of September 19 74, before me, a Notary Public duly authorized in and for the said County in the State aforesaid to take acknowledgments, personally appeared F. E. Sears residing at 34 [illegible] Street Jackson Heights, N.Y. to me known and known to me to be a Vice-President of J. C. PENNEY COMPANY, INC., one of the corporations described in the foregoing instrument, and acknowledged that as such officer, being authorized so to do, he executed the foregoing instrument on behalf of said corporation by subscribing the name of said corporation by himself as such officer and caused the corporate seal of said corporation to be affixed thereto, as his free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires:

..... Arlene Crawford
Notary Public

ARLENE CRAWFORD
Notary Public State of New York
No. 41-4508486
Qualified in Queens County
Certificate filed in New York County
Commission Expires March 30, 1975

ARLENE CRAWFORD • NOTARY PUBLIC • STATE OF NEW YORK

VOL 7451 PAGE 756

AS ORIGINAL

140.00

WINDSOR PARK MALL
San Antonio, Texas

EASEMENT AND OPERATING AGREEMENT

September 10, 1974

VOL. 7451 PAGE 757

Return to:
Stewart Title Company
P.O. Box 13350
San Antonio, Texas 78213
G.F.# 187952 - Stegall

VOL 7451 PAGE 758

STATE OF TEXAS
COUNTY OF BEXAR

I hereby certify that this instrument was FILED on the date and at the time stamped hereon by me and was duly RECORDED in the Volume and Page of the DEED RECORDS of Bexar County, Texas as stamped hereon by me.

OCT 1 1974

James W. Knight
COUNTY CLERK
BEXAR COUNTY, TEXAS

FILED IN MY OFFICE
JAMES W. KNIGHT
COUNTY CLERK BEXAR CO.

1974 OCT 1 AM 11 54

600684

MODIFICATION OF EASEMENT AND OPERATING AGREEMENT

001-30-75 113011 US — I 1650

THIS MODIFICATION OF EASEMENT AND OPERATING AGREEMENT, made and dated as of the 5th day of May, 1975, by and among WINDSOR PARK DEVELOPMENT COMPANY, a Texas Limited Partnership ("Developer"), and J. C. PENNEY PROPERTIES, INC., a Delaware Corporation qualified to do business in the State of Texas ("Penney"), and MONTGOMERY WARD DEVELOPMENT CORPORATION, a Delaware Corporation qualified to do business in the State of Texas ("Ward"), and CONSTRUCTION DEVELOPERS, INCORPORATED, an Arkansas Corporation qualified to do business in the State of Texas ("Condev"), and DILLARD DEPARTMENT STORES, INC., a Delaware Corporation qualified to do business in the State of Texas ("DDSI") (Condev and DDSI being hereinafter collectively referred to as "Dillard"), and ALSTORES REALTY CORPORATION, a Delaware Corporation quailified to do business in the State of Texas ("Alstores"), and ALLIED STORES OF TEXAS, INC., a Texas Corporation ("Joske") (Alstores and Joske being hereinafter collectively referred to as "Allied"), (Developer, Penney, Ward, Condev, DDSI, Alstores and Joske being hereinafter collectively referred to as the "Parties").

WITNESSETH THAT:

WHEREAS, the Parties are the parties to and have executed that certain Easement and Operating Agreement, made and dated as of September 10, 1974, and recorded October 1, 1974 in Volume 7451, Page 649 of the Deed Records of Bexar County, Texas as Instrument Number 496504 (hereinafter referred to as the "Easement Agreement"), covering those certain plots and parcels of land located in Bexar County, Texas, which are more particularly described in their entirety in Exhibit "B" attached to and forming a part of the Easement Agreement (which plots and parcels of land, taken collectively, are therein, and shall hereinafter herein, be referred to as the "Entire Premises"); and

VOL 7693 PAGE 199

WHEREAS, one of the purposes of the Easement Agreement is to allow for the optimum development of the Entire Premises as a unified and coordinated retail sales area, and, in order to achieve said purpose,

SRK

it is necessary for certain portions of the Entire Premises to be dedicated to the City of San Antonio, Texas, its successors and assigns, for certain public purposes, which portions of the Entire Premises will no longer be available for development as part of the shopping center contemplated under the Easement Agreement; and

WHEREAS, the Parties agree that said portions of the Entire Premises should be released from the operation and effect of the Easement Agreement;

NOW, THEREFORE, for and in consideration of the foregoing, the mutual agreements herein and in the Easement Agreement contained and other good and valuable consideration to each of the parties hereto paid by the others, the receipt and sufficiency whereof is hereby acknowledged, the Parties agree, with respect to the Easement Agreement, as follows:

1. Those portions of the Entire Premises described in Exhibits "A-1", "A-2", and "A-3" attached hereto and hereby made a part hereof (constituting, respectively, portions of the "Penney Site", the "Dillard Site" and the "Developer Site", each as defined in the Easement Agreement) shall be and they hereby are released and removed from the operation and effect of the Easement Agreement, and all rights, licenses, easements, restrictions and other covenants, obligations and conditions of the Easement Agreement; said portions of the Entire Premises shall hereafter be held by the respective owners thereof free and clear of the Easement Agreement and all of the terms and conditions thereof, to enable the respective owners of said portions of the Entire Premises to dedicate said portions to the City of San Antonio, Texas, its successors and assigns, for public purposes, including a right-of-way for a street or highway and utilities, drainage and sewer lines.

2. The Parties consent to the granting by Penney, Dillard, and Developer to the City of San Antonio, Texas, its successors and assigns, of a temporary construction easement and a permanent easement for the maintenance of public utility lines, conduits and pipe lines, over, across, upon and under those portions of the Entire Premises described in Exhibits "B-1", "B-2", and "B-3" attached hereto and hereby made a part hereof, which portions of the Entire Premises constitute, respectively, portions of the Penney Site, the Dillard Site, and the Developer Site.

ERK

3. Except as herein expressly changed, amended, modified or supplemented, the terms and conditions of the Easement Agreement shall be unaffected and shall continue and remain in full force and affect. If there shall appear a conflict between the terms and conditions of the Easement Agreement and this Modification, then the terms and conditions of this Modification shall control.

4. Each signatory to this Modification represents that it, together with any mortgagee of or holder of any note or other obligation secured by a Deed of Trust on its Site executing or consenting to this Modification, is or are the sole party or parties having an interest in such Party's Site, as defined and described in the Easement Agreement, as of the date of execution and delivery of this Modification.

5. This Modification may be executed in counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Modification to be executed as of the day and year first hereinabove set forth.

WINDSOR PARK DEVELOPMENT COMPANY

By: _____, General Partner

STATE OF INDIANA)
)
COUNTY OF MARION)

On this the 16th day of May, 1975, before me, a Notary Public duly authorized in and for the said County in the State aforesaid to take acknowledgments, personally appeared Melvin Simon, General Partner of WINDSOR PARK DEVELOPMENT COMPANY, a Texas limited partnership, known to me to be the person who subscribed to the foregoing instrument and acknowledged having executed the same as a free and voluntary act for and on behalf of said limited partnership for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Sara Donahue
Sara Donahue, Notary Public

My Commission Expires:
May 13, 1978

VOL 7693 PAGE 201

J. C. PENNEY PROPERTIES, INC.

By: _____, Vice President

ATTEST: _____
Assistant Secretary

APPROVED
ATTORNEY

STATE OF NEW YORK }
}
COUNTY OF NEW YORK }

On this the 19th day of May, 1975, before me, Peggy Ann Carl, the undersigned officer, personally appeared E. E. Sears, who acknowledged himself to be the Vice President of J. C. PENNEY PROPERTIES, INC., a corporation, and that he as such Vice President, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as Vice President.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Peggy Ann Carl, Notary Public
Peggy Ann Carl

My Commission Expires:
PEGGY ANN CARL
NOTARY PUBLIC, State of New York
No. 03-2292815
Qualified in Bronx County
Term Expires March 30, 1977

MONTGOMERY WARD DEVELOPMENT CORPORATION

By: _____
Vice President and Treasurer

ATTEST:

James A. McCartan
Secretary

STATE OF Illinois)
)
COUNTY OF Cook)

On this 15th day of May, 1975, before me Lauretta J. Moran, the undersigned officer, personally appeared Bruce B Gobeyn, who acknowledged himself to be the Vice President and Treasurer of MONTGOMERY WARD DEVELOPMENT CORPORATION, a corporation, and that he as such Vice President and Treasurer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as Vice President and Treasurer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Lauretta J. Moran
Lauretta J. Moran, Notary Public

My Commission Expires:
November 13, 1978

LAURETTA J. MORAN NOTARY PUBLIC COOK COUNTY, ILL.

VOL 7693 PAGE 203

DILLARD DEPARTMENT STORES, INC.

By: E. Ray Kemp Jr. Exec Vice President

ATTEST:

Secretary

VOL 7693 PAGE 204

STATE OF Arkansas X
X
COUNTY OF Pulaski X

On this the 14th day of May, 1975, before me Jo Ann Phillips, the undersigned officer, personally appeared E. Ray Kemp, Jr., who acknowledged himself to be the President of DILLARD DEPARTMENT STORES, INC., a corporation, and that he as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as President.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Jo Ann Phillips, Notary Public

My Commission Expires:

8/1/78

CONSTRUCTION DEVELOPERS, INCORPORATED

By: E. Ray Kemp Jr. Exec. President

ATTEST:

Secretary

STATE OF Arkansas X
X
COUNTY OF Pulaski X

On this the 14th day of May, 1975, before me Jo Ann Phillips, the undersigned officer, personally appeared E. Ray Kemp, Jr., who acknowledged himself to be the President of CONSTRUCTION DEVELOPERS, INCORPORATED, a corporation, and that he as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as President.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Jo Ann Phillips, Notary Public

My Commission Expires:

8/1/78

ALSTORES REALTY CORPORATION

By: Andrew L. Murphy
President

ATTEST:

Assistant Secretary

STATE OF New York X
X
COUNTY OF New York X

On this the 12 day of May, 1975, before me, a Notary Public duly authorized in and for the said County in the State aforesaid to take acknowledgments, personally appeared Andrew L. Murphy, residing at New York, to me known and known to me to be the President of ALSTORES REALTY CORPORATION, one of the corporations described in the foregoing instrument, and acknowledged that as such officer, being authorized so to do, he executed the foreoing instrument on behalf of said corporation by subscribing the name of such corporation by himself as such officer and caused the corporate seal of said corporation to be affixed thereto, as his free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Janice Rae Schwarzrand, Notary Public

My Commission Expires:
JANICE RAE SCHWARZRAND
NOTARY PUBLIC, State of New York
No. 41-8738670
Qualified in Queens County
Cert. filed in New York County
Commission Expires March 30, 1976

ALLIED STORES OF TEXAS, INC.

By: H E Hassler
Vice President

ATTEST:

Assistant Secretary

STATE OF New York X
X
COUNTY OF New York X

On this the 12 day of May, 1975, before me, a Notary Public duly authorized in and for the said County and State aforesaid to take acknowledgments, personally appeared Howard E. Hassler, residing at New York, to me known and known to me to be President of ALLIED STORES OF TEXAS, INC., one of the corporations described in the foregoing instrument, and acknowledged that as such officer, being authorized so to do, he executed the foregoing instrument on behalf of said corporation by subscribing the name of such corporation by himself as such officer and caused the corporate seal of said corporation to be affixed thereto, as his free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Janice Rae Schwarzrand, Notary Public

My Commission Expires:
JANICE RAE SCHWARZRAND
NOTARY PUBLIC, State of New York
No. 41-8738670
Qualified in Queens County
Cert. filed in New York County
Commission Expires March 30, 1976

VOL 7693 PAGE 205

CONSENT AND SUBORDINATION

The undersigned hereby consents to the above and foregoing Modification of the Easement and Operating Agreement referred to in such Modification, to which this Consent and Subordination is attached, and hereby acknowledges and agrees that all of its right, title and interest as mortgagee of the Dillard Site (as such term is defined in the Easement and Operating Agreement) or as the beneficiary under a deed of trust on the Dillard Site, and all of its right, title and interest as the assignee under any assignment of leases affecting the Dillard Site, and the lien or liens of any such mortgage, deed of trust or assignment of leases, is now and shall be, at all times, subject and subordinate to all of the terms, conditions and provisions of said Easement and Operating Agreement, as changed, modified and amended by the foregoing Modification.

IN WITNESS WHEREOF, the undersigned has caused this Consent and Subordination to be duly executed as of May 5, 1975.

NATIONAL BANK OF COMMERCE OF SAN ANTONIO

By: L. D. Maltsberger
Senior Vice President

ATTEST:
James C. Gallagher
Assistant Cashier

STATE OF TEXAS X
X
COUNTY OF BEXAR X

Before me, the undersigned authority, on this day personally appeared L. D. Maltsberger, the Senior Vice President of NATIONAL BANK OF COMMERCE OF SAN ANTONIO, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said NATIONAL BANK OF COMMERCE OF SAN ANTONIO, and that he executed the same as the act of said NATIONAL BANK OF COMMERCE OF SAN ANTONIO for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 21st day of May, 1975.

Maybelle C. Doerr
Notary Public in and for Bexar County, TEXAS

MAYBELLE C. DOERR
Notary Public, Bexar County, Texas

My Commission Expires:
5-31-75

NOTARY PUBLIC STATE OF TEXAS COUNTY OF BEXAR

EKL

CONSENT AND SUBORDINATION

The undersigned hereby consents to the above and foregoing Modification of the Easement and Operating Agreement referred to in such Modification, to which this Consent and Subordination is attached, and hereby acknowledges and agrees that all of its right, title and interest as mortgagee of the Developer Site (as such term is defined in the Easement and Operating Agreement) or as the beneficiary under a deed of trust on the Developer Site, and all of its right, title and interest as the assignee under any assignment of leases affecting the Developer Site, and the lien or liens of any such mortgage, deed of trust or assignment of leases, is now and shall be, at all times, subject and subordinate to all of the terms, conditions and provisions of said Easement and Operating Agreement, as changed, modified and amended by the foregoing Modification.

IN WITNESS WHEREOF, the undersigned has caused this Consent and Subordination to be duly executed as of May 5, 1975.

AMERICAN FLETCHER MORTGAGE COMPANY, INC.

By: Frank C. Pirillo VP
Frank C. Pirillo, Vice President

ATTEST:
Ronald A. Lisak
Ronald A. Lisak, Assistant Secretary

STATE OF INDIANA)
)
COUNTY OF MARION)

Before me, the undersigned authority, on this day personally appeared Frank C. Pirillo, the Vice President of AMERICAN FLETCHER MORTGAGE COMPANY, INC., known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said AMERICAN FLETCHER MORTGAGE COMPANY, INC., and that he executed the same as the act of said AMERICAN FLETCHER MORTGAGE COMPANY, INC. for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 16th day of May, 1975.

B. Marie Shea
Notary Public in and for Marion County, INDIANA

My Commission Expires:
July 20, 1977

Vol 7693 PG 207

0.1031 of one acre of land, more or less, in New City Block 12190 in the City of San Antonio, same being out of and a part of a 12.49 acre tract of land out of Lot 21, New City Block 12190, Simon Subdivision according to the subdivision plat of said subdivision of record in Volume 7300, Pages 69 and 70, Plat Records of Bexar County, Texas, which 12.49 acre tract of land was conveyed to J. C. Penney Properties, Inc. by deed dated September 10, 1974 of record in Volume 7451, Page 633, Deed Records of said county which 0.1031 of one acre of land, more or less is more particularly described by metes and bounds as follows:

BEGINNING at the point of intersection of the division line between the J. C. Penney Properties, Inc. and the Dillard Department Stores, Inc. properties with the existing south right-of-way line of F.M. Road 1976 (Walzem Road), said point also being North 89° 59' 55" West, a distance of 592.00 feet and South 88° 41' 55" West, a distance of 112.72 feet along the existing south right-of-way line of said road from the most northerly northeast corner of said Lot 21;

THENCE SOUTH, a distance of 15.60 feet along said property division line to a point for a corner on the proposed south right-of-way line of said road, which point is North, a distance of 64.40 feet along said property division line from the most northerly southeast corner of the J. C. Penney Properties, Inc. property;

THENCE, along the proposed south right-of-way line of F.M. Road 1976 as follows:

NORTH 89° 59' 55" West, a distance of 38.00 feet to an angle point; and

NORTH 88° 12' 41" West, a distance of 500.20 feet to a point for a corner on the existing south right-of-way line of said road;

THENCE SOUTH 89° 59' 55" East, a distance of 537.96 feet along the existing south right-of-way line of said road to the point of BEGINNING.

EXHIBIT "A-1"

EKR

0.2120 of one acre of land, more or less, in New City Block 12190 in the City of San Antonio, same being out of and a part of a 12.40 acre tract of land out of Lot 21, New City Block 12190, Simon Subdivision according to the subdivision plat of said subdivision of record in Volume 7300, Pages 69 and 70 Plat Records of Bexar County, Texas, which 12.40 acre tract of land was conveyed to Dillard Department Stores, Inc. by deed dated September 10, 1974 of record in Volume 7451, Page 643, Deed Records of said county, which 0.2120 of one acre of land, more or less, is more particularly described by metes and bounds as follows:

BEGINNING at the point of intersection of the division line between the Dillard Department Stores, Inc. and the Windsor Park Development Company properties with the existing south right-of-way line of F.M. Road 1976 (Walzem Road), said point also being South 88° 41' 55" West, a distance of 112.72 feet along the existing south right-of-way line of said road from the most northerly northeast corner of said Lot 21;

THENCE SOUTH, a distance of 15.60 feet along said property division line to a point for a corner on the proposed south right-of-way line of F.M. Road 1976, which point is North, a distance of 132.67 feet along said property division line from a reentrant corner of the Dillard Department Stores, Inc. property;

THENCE NORTH 89° 59' 55" West, a distance of 592.00 feet along the proposed south right-of-way line of F.M. Road 1976 to a point for a corner on a west line of the Dillard Department Stores, Inc. property;

THENCE NORTH, a distance of 15.60 feet along said west property line to a point for a corner on the existing south right-of-way line of F.M. Road 1976;

THENCE SOUTH 89° 59' 55" East, a distance of 592.00 feet along the existing south right-of-way line of F.M. Road 1976 to the point of BEGINNING.

EXHIBIT "A-2"

VOL 7693 PAGE 209

ERK

0.0670 of one acre of land, more or less, in New City Block 12190 in the City of San Antonio, same being out of and a part of Lot 21, New City Block 12190, Simon Subdivision according to the subdivision plat of said subdivision of record in Volume 7300, Pages 69 and 70 Plat Records of Bexar County, Texas, which Lot 21 was conveyed to Windsor Park Development Company by deed dated November 7, 1972 of record in Volume 6933, Page 250, Deed Records of said county, which 0.0670 of one acre of land, more or less is more particularly described by metes and bounds as follows:

BEGINNING at the point of intersection of the division line between the Windsor Park Development Company and the Dillard Department Stores, Inc. properties with the existing south right-of-way line of F.M. Road 1976 (Walzem Road), said point also being South 88° 41' 55" West, a distance of 112.72 feet along the existing south right-of-way line of said road from the most northerly northeast corner of said Lot 21;

THENCE, along the existing south and southwest right-of-way line of F.M. Road 1976 as follows:

NORTH 88° 41' 55" East, a distance of 112.72 feet to a point for a corner; and

SOUTH 45° 19' 54" East, a distance of 52.39 feet to a point for a corner on the west line of Mordred Drive;

THENCE SOUTH 00° 00' 22" West, a distance of 28.82 feet along the west line of Mordred Drive to a point for a corner on the proposed southwest right-of-way line of F.M. Road 1976;

THENCE, along the proposed southwest and south right-of-way line of F.M. Road 1976 as follows:

NORTH 45° 19' 54" West, a distance of 70.77 feet to a point for a corner; and

SOUTH 88° 41' 55" West, a distance of 99.64 feet to a point for a corner on said property division line, which point is North East, a distance of 132.67 feet along said property division line from the southwest corner of the Windsor Park Development Company property;

THENCE NORTH, a distance of 15.60 feet along said property division line to the point of BEGINNING.

EXHIBIT "A-3"

ERK

0.1037 of one acre of land, more or less, in New City Block 12190 in the City of San Antonio, same being out of and a part of a 12.49 acre tract of land out of Lot 21, New City Block 12190, Simon Subdivision according to the subdivision plat of said subdivision of record in Volume 7300, Pages 69 & 70, Plat Records of Bexar County, Texas, which 12.49 acre tract of land was conveyed to J. C. Penney Properties, Inc. by deed dated September 10, 1974 of record in Volume 7451, Page 633, Deed Records of said county, which 0.1037 of one acre of land, more or less, is more particularly described by metes and bounds as follows:

BEGINNING at a point for a corner on the division line between the J. C. Penney Properties, Inc. and the Dillard Department Stores, Inc. properties, which point is North, a distance of 55.00 feet along said property division line from the most northerly southeast corner of the J. C. Penney Properties, Inc. property;

THENCE, along a line as follows:

NORTH 89° 59' 55" West, a distance of 38.00 feet to an angle point; and

NORTH 87° 42' 28" West, a distance of 500.36 feet to an angle point; and

NORTH 89° 59' 55" West, a distance of 112.36 feet to a point for a corner on a west line of the J. C. Penney Properties, Inc. property;

THENCE NORTH 00° 21' 06" East, a distance of 5.00 feet along said west property line to a point for a corner on the existing south right-of-way line of said road;

THENCE SOUTH 89° 59' 55" East, a distance of 112.33 feet along the existing south right-of-way line of F.M. Road 1976 to an angle point;

THENCE, along a line as follows:

SOUTH 88° 12' 41" East, a distance of 500.20 feet to an angle point; and

SOUTH 89° 59' 55" East, a distance of 38.00 feet to a point for a corner on said property division line;

THENCE SOUTH, a distance of 9.40 feet along said property division line to the point of BEGINNING.

VOL 7693 PAGE 211

EXHIBIT "B-1"

ERK

0.1278 of one acre of land, more or less, in New City Block 12190 in the City of San Antonio, same being out of a part of a 12.40 acre tract of land out of Lot 21, New City Block 12190, Simon Subdivision according to the subdivision plat of said subdivision of record in Volume 7300, Pages 69 and 70 Plat Records of Bexar County, Texas, which 12.40 acre tract of land was conveyed to Dillard Department Stores, Inc. by deed dated September 10, 1974 of record in Volume 7451, Page 645, Deed Records of said County, which 0.1278 of one acre of land, more or less, is more particularly described by metes and bounds as follows:

BEGINNING at a point for a corner on the division line between the Dillard Department Stores, Inc. and the Windsor Park Development Company properties, which point is North, a distance of 123.27 feet along said property division line from a reentrant corner of the Dillard Department Stores, Inc. property;

THENCE NORTH 89° 59' 55" West, a distance of 592.00 feet along a line to a point for a corner on a west line of the Dillard Department Stores, Inc. property;

THENCE NORTH, a distance of 9.40 feet along said west property line to a point for a corner on the proposed south right-of-way line of F.M. Road 1976 (Walzem Road);

THENCE SOUTH 89° 59' 55" East, a distance of 592.00 feet along the proposed south right-of-way line of said road to a point for a corner on said property division line;

THENCE SOUTH, a distance of 9.40 feet along said property division line to the point of BEGINNING.

EXHIBIT "B-2"

ERK

0.0321 of one acre of land, more or less, in New City Block 12190 in the City of San Antonio, same being out of and a part of Lot 21, New City Block 12190, Simon Subdivision according to the subdivision plat of said subdivision of record in Volume 7300, Pages 69 and 70, Plat Records of Bexar County, Texas, which Lot 21 was conveyed to Windsor Park Development Company by deed dated November 7, 1972 of record in Volume 6933, Page 250, Deed Records of said County, which 0.0321 of one acre of land, more or less, is more particularly described by metes and bounds as follows:

BEGINNING at a point for a corner on the division line between the Windsor Park Development Company and the Dillard Department Stores, Inc. properties which point is North, a distance of 123.27 feet along said property division line from the southwest corner of the Windsor Park Development Company property;

THENCE NORTH, a distance of 9.40 feet along said property division line to a point for a corner on the proposed south right-of-way line of F.M. Road 1976 (Walzem Road);

THENCE, along the proposed south and southwest right-of-way line of F.M. Road 1976 as follows:

NORTH 88° 41' 55" East, a distance of 99.64 feet to a point for a corner; and

SOUTH 45° 19' 54" East, a distance of 70.77 feet to a point for a corner on the west line of Mordred Drive;

THENCE SOUTH 00° 00' 22" West, a distance of 9.18 feet along the west line of Mordred Drive to a point for a corner;

THENCE, along a line as follows:

North 45° 19' 54" West, a distance of 70.47 feet to a point for a corner; and

SOUTH 88° 41' 55" West, a distance of 99.86 feet to the point of BEGINNING.

VOL 7693 PAGE 213

EXHIBIT "B-3"

ERK

FILED IN MY OFFICE
JAMES W. KNIGHT
COUNTY CLERK BEXAR CO.
1975 OCT 30 PM 2:55

VOL 7693 PAGE 214

STATE OF TEXAS
COUNTY OF BEXAR

I hereby certify that this instrument was FILED on the date and at the time stamped hereon by me and was duly RECORDED in the Volume and Page of the DEED RECORDS of Bexar County, Texas, as stamped hereon by me.

OCT 31 1975

COUNTY COURT OF BEXAR COUNTY, TEXAS

James W. Knight
COUNTY CLERK
BEXAR COUNTY, TEXAS

2650

APR-28-77 59829 LS 2460 2650

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VOL 8069 PAGE 704

SECOND AMENDMENT OF
EASEMENT AND OPERATING AGREEMENT

THIS SECOND AMENDMENT OF EASEMENT AND OPERATING AGREEMENT, made and entered into as of this 15th day of APRIL, 1977, by and among WINDSOR PARK DEVELOPMENT COMPANY, a Texas limited Partnership ("Developer"), and J. C. PENNEY PROPERTIES, INC., a Delaware corporation qualified to do business in the State of Texas ("Penney"), and MONTGOMERY WARD DEVELOPMENT CORPORATION, a Delaware corporation qualified to do business in the State of Texas ("Ward"), and CONSTRUCTION DEVELOPERS, INCORPORATED, an Arkansas corporation qualified to do business in the State of Texas ("Condev"), and DILLARD DEPARTMENT STORES, INC., a Delaware corporation qualified to do business in the State of Texas ("DDSI"), (Condev and DDSI being hereinafter collectively referred to as "Dillard"), and ALSTORES REALTY CORPORATION, a Delaware corporation qualified to do business in the State of Texas ("Alstores"), and ALLIED STORES OF TEXAS, INC., a Texas corporation ("Joske"), (Alstores and Joske being hereinafter collectively referred to as "Allied"), (Developer, Penney, Ward, Condev, DDSI, Alstores and Joske being hereinafter collectively referred to as the "Parties").

WITNESSETH THAT:

WHEREAS, the Parties are the parties to and have executed that certain Easement and Operating Agreement, made and dated as of September 10, 1974, and recorded October 1, 1974, in Volume 7451, Page 649, of the Deed Records of Bexar County, Texas, as Instrument Number 496504, as amended by that certain Modification of Easement and Operating Agreement made and dated as of May 5, 1975, and recorded October 30, 1975, in Volume 7693, Page 199, of the Deed Records of Bexar County, Texas, as Instrument Number 600684 (which Easement and Operating Agreement, as amended, is hereinafter referred to as the "Operating Agreement"); and

WHEREAS, the Parties now desire to further amend said Operating Agreement in certain particulars.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements of the Parties, and for other good and valuable consideration, paid to each of the Parties hereto by the others, the receipt and sufficiency of all of which is hereby acknowledged, the Parties hereby agree that said Operating Agreement is hereby amended as follows:

1. Section 2F of the Operating Agreement is hereby amended and modified by adding the following proviso at the conclusion thereof, to-wit:

> "Provided, however, notwithstanding anything to the contrary contained herein, the foregoing covenants and agreements contained in this Section 2F shall not obligate or be binding upon any mortgagee of the Developer Site or any holder of a deed of trust on the Developer Site if and when any such mortgagee or deed of trust beneficiary succeeds to the ownership of the Developer Site."

2. The figures "180,000" and "355,000" are hereby deleted from the fifth line and seventh line, respectively, of subparagraph 8.1(a) on page 14 of the Operating Agreement, and there are hereby substituted therefor the figures "185,000" and "370,000", respectively.

3. Section 15.1 is hereby deleted from said Operating Agreement, and there is hereby substituted therefor the following, to-wit:

"15.1 Provided (i) Developer shall not be in default under its operating covenant set forth in Section 14, (ii) at least two (2) of Ward, DDSI and Joske shall not be in default under their respective operating covenants set forth in Sections 15.2, 15.3 and 15.4 respectively, and (iii) tenants or operators occupying at least 65% of the Floor Area of the Mall Store Buildings (exclusive of any theatre) shall be conducting business, Penney shall, for a period of fifteen (15) years following the opening of business in the Penney Main Store Building continuously operate or cause to be continuously operated a retail department store in the Penney Main Store Building containing a Floor Area at least equal to that specified in Section 9.1(a) under a trade name which includes the word "Penney" or "Penney's" or under such other trade name as referred to in Section 15.5; provided, however, that if such occupancy of the Mall Store Buildings falls below 65%, Penney nevertheless shall remain open and continue to operate its department store as aforesaid, and shall not cease or exercise any right to cease operating unless such condition continues for more than one (1) year after Penney has given written notice to Developer and to any mortgagee or deed of trust beneficiary of the Developer Site that such condition exists, during which period of one (1) year following receipt of such notice Developer shall have the opportunity to restore the occupancy of the Mall Store Buildings to the required minimum of 65%; and provided further that during such one (1) year period such deficiency in occupancy of the Mall Store Buildings shall not constitute a default by Developer under Section 14.1 of this Agreement."

4. Section 15.2 is hereby deleted from said Operating Agreement, and there is hereby substituted therefor the following, to-wit:

"15.2 Provided (i) Developer shall not be in default under its operating covenant set forth in Section 14, (ii) at least two (2) of Penney, DDSI and Joske shall not be in default under their respective operating covenants set forth in Sections 15.1, 15.3 and 15.4 respectively and (iii) tenants or operators occupying at least 65% of the Floor Area of the Mall Store Buildings (exclusive of any theatre) shall be conducting business, Ward shall, for a period of fifteen (15) years following the opening of business in the Ward Main Store Building continuously operate or cause to be continuously operated a retail department store in the Ward Main Store Building containing a Floor Area at least equal to that specified in Section 9.3(a) under a trade name which includes the word or words "Ward" or "Montgomery Ward" or under such other trade name as referred to in Section 15.5; provided, however, that if such occupancy of the Mall Store

VOL 8069 PAGE 705

Buildings falls below 65%, Ward nevertheless shall remain open and continue to operate its department store as aforesaid, and shall not cease or exercise any right to cease operating unless such condition continues for more than one (1) year after Ward has given written notice to Developer and to any mortgagee or deed of trust beneficiary of the Developer Site that such condition exists, during which period of one (1) year following receipt of such notice Developer shall have the opportunity to restore the occupancy of the Mall Store Buildings to the required minimum of 65%; and provided further that during such one (1) year period such deficiency in occupancy of the Mall Store Buildings shall not constitute a default by Developer under Section 14.1 of this Agreement."

VOL 8069 PAGE 706

5. Section 15.3 is hereby deleted from said Operating Agreement and there is hereby substituted therefor the following, to-wit:

"15.3 Provided (i) Developer shall not be in default under its operating covenant set forth in Section 14, (ii) at least two (2) of Penney, Ward and Joske shall not be in default under their respective operating covenants set forth in Sections 15.1, 15.2 and 15.4 respectively, and (iii) tenants or operators occupying more than 65% of the Floor Area of the Mall Store Buildings (exclusive of any theatre) shall be conducting business, DDSI shall, for a period of fifteen (15) years following its opening for business in the Dillard Store Building, continuously operate or cause to be operated therein a retail department store in the Dillard Store Building containing a Floor Area at least equal to that specified in Section 9.5(a) under a trade name including the word "Dillard" or under such other trade name as referred to in Section 15.5; provided, however, that if such occupancy of the Mall Store Buildings falls below 65%, DDSI nevertheless shall remain open and continue to operate its department store as aforesaid, and shall not cease or exercise any right to cease operating unless such condition continues for more than one (1) year after DDSI has given written notice to Developer and to any mortgagee or deed of trust beneficiary of the Developer Site that such condition exists, during which period of one (1) year following receipt of such notice Developer shall have the opportunity to restore the occupancy of the Mall Store Buildings to the required minimum of 65%; and provided further that during such one (1) year period such deficiency in occupancy of the Mall Store Buildings shall not constitute a default by Developer under Section 14.1 of this Agreement."

6. Section 15.4 is hereby deleted from said Operating Agreement and there is hereby substituted therefor the following, to-wit:

"15.4 Provided (i) Developer shall not be in default under its operating covenant set forth in Section 14, (ii) at least two (2) of Penney, Ward and DDSI shall not be in default under their respective operating covenants set forth in Sections 15.1, 15.2 and 15.3 respectively, and (iii) tenants or operators occupying more than 65% of the Floor Area of the Mall Store Buildings (exclusive of any theatre) shall be conducting business, Joske shall, for a period of

fifteen (15) years following its opening for business in the Joske Store Building, continuously operate or cause to be operated therein a retail department store in the Joske Store Building containing a Floor Area at least equal to that specified in Section 9.6A(a) under a trade name which includes the word "Joske" or under such other trade name as referred to in Section 15.5; provided, however, that if such occupancy of the Mall Store Buildings falls below 65%, Joske nevertheless shall remain open and continue to operate its department store as aforesaid, and shall not cease or exercise any right to cease operating unless such condition continues for more than one (1) year after Joske has given written notice to Developer and to any mortgagee or deed of trust beneficiary of the Developer Site that such condition exists, during which period of one (1) year following receipt of such notice Developer shall have the opportunity to restore the occupancy of the Mall Store Buildings to the required minimum of 65%; and provided further that during such one (1) year period such deficiency in occupancy of the Mall Store Buildings shall not constitute a default by Developer under Section 14.1 of this Agreement."

RECORDERS MEMORANDUM
All or parts of the text on this page was not clearly legible for satisfactory recordation.

7. Section 17, on page 31 of the Operating Agreement, is deleted in its entirety and there is hereby substituted therefor the following, to-wit:

Section 17 - Temporary Cessation of Business.

"Any temporary cessation of business by any party occasioned by the making of repairs, alterations, or renovations or by any Unavoidable Delay or any temporary cessation of business not in excess of three (3) months, (provided same is for a bona fide business purpose) shall not constitute a breach on the part of the party so ceasing business of its covenant to operate, as provided in Section 14 or Section 15 as the case may be."

8. The second grammatical paragraph of Section 28.1, on page 39 of the Operating Agreement, is hereby deleted and there is hereby substituted therefor the following, to-wit:

"No party shall be liable to any other party or to any insurance company insuring the other party for any loss or damage to any building or other structure which was or could have been covered by such insurance even though such loss or damage might have been occasioned by the negligence of such party, its agent or employees, provided that this waiver does not invalidate any such insurance coverage or impair the right to collect thereunder in the event of any loss."

9. Section 39, on page 48 of the Operating Agreement, is hereby amended by adding thereto the following, to-wit:

Section 39 - No Termination of Agreement.

"39.2 It is further mutually understood and agreed that notwithstanding the right of any party hereto to exclude its Site from the operation and effect of this Agreement or to terminate same, such right shall in no way limit, restrict or curtail any of the rights or privileges that any other party hereby may have pursuant to Sections 20.2, 20.3 and 22 in the Site so excluded or in and to or upon any of the Common Facilities located upon the Site so excluded crosshatched in red on Exhibit A attached to the Second Amendment of Easement and Operating Agreement being the survey of Albert B. Fernandez certified October 13, 1976 as revised to February 17, 1977, (said crosshatched area sometimes hereinafter referred to as 'Ring Road'), which rights and privileges, (i) as to Sections 20.2, 20.3 and 22 shall continue notwithstanding such exclusion, for the term(s) provided in said Sections, and (ii) as to Common Facilities, crosshatched in red, shall continue for the term of the Agreement, including any renewals. However, at any time follow-

VOL 8069 PAGE 707

ing such exclusion, any party hereto upon whose excluded Site any portion of said Ring Road shall be located shall have the right upon not less than sixty (60) days prior notice to the other parties hereto at any time and from time to time, to move and relocate any portion of said Ring Road on its Site to such other place on its Site as it shall designate, provided (i) such relocation shall be made at the sole cost and expense of the party so relocating, (ii) the relocated portion of said Ring Road shall provide reasonably direct access to the other Sites of the parties served thereby at such points where such other Sites abut and are contiguous to the Site of the party relocating said Ring Road, (iii) all entrances and exits to adjoining streets and highways shall remain and the quality of construction and width of all relocated portions of Ring Road shall be substantially similar to Ring Road as originally constructed and (iv) the relocation shall be carried out in such a manner as to cause the least possible interference with the conduct or operation of business of other parties hereto during such relocation. The cost of repair and maintenance of existing Ring Road, or following any such relocation shall be borne and paid for by Developer, and neither the party whose Site is excluded nor any other party, except Developer, shall have any responsibility in connection with the repair and maintenance of those portions of Ring Road which remain in use on such excluded Site."

VOL 8069 PAGE 708

10. Section 47, on page 51 of the Operating Agreement, is hereby amended by adding thereto, as a separate paragraph immediately preceding the last paragraph thereof, the following, to-wit:

"With respect to each notice or demand required or permitted to be served upon any party hereto by any of the other parties hereto, a copy thereof shall be delivered in the manner set forth above to the first mortgagee or deed of trust holder of the Site of any such party upon whom such notice or demand is served, provided that such first mortgagee or deed of trust holder shall have requested such service in writing and in the manner provided herein for givingsuch notice and furnished its address to the parties hereto."

11. Section 49.1, appearing on page 51 of the Operating Agreement, is hereby amended by adding the following additional sentences at the conclusion thereof, to-wit:

"It is further mutually understood and agreed, however, notwithstanding anything to the contrary herein contained that neither the holder of the beneficial interest in the first Deed of Trust and the Note secured thereby (sometimes hereinafter referred to as "holder" or "beneficiary") on the Developers' Site who may foreclose such Deed of Trust or accept a deed in lieu thereof, nor anyone who acquires said Developer Site from said holder or beneficiary or at a sale held in connection with such foreclosure, (sometimes hereinafter referred to as "other person") shall have any personal obligation or personal liability for the curing of any defaults which occur before the earliest date on which either said holder or beneficiary or other person shall have acquired either possession of or title to Developers' Site; provided, however, that nothing herein contained shall relieve said holder or beneficiary or other person of any obligations which it may have under this Agreement with respect to defaults occurring before the aforesaid date but which continue thereafter or which occur during the period that said holder or beneficiary or other person is in possession of or holds title to the Developers' Site. It is further agreed that said holder or beneficiary or other person shall from and after the date on which said holder or beneficiary or other person transfers or conveys its interest in said Developers' Site to another be freed and relieved of all liability as respects the performance of any covenants or obliga-

tions on the part of the Developer to be thereafter performed; provided, however, that said holder or beneficiary or other person shall not be relieved of any liability arising hereunder which shall have accrued prior to such transfer or conveyance by reason of said holder's or beneficiary's or other person's failure while it was in possession of or held title to the Developers' Site to perform the obligations of the Developer hereunder. Anything in this Section to the contrary notwithstanding, it is understood and agreed that: (i) each Department Store shall have and retain all of the rights granted to it under Section 34 of this Agreement captioned 'Unperformed Covenants of Developer' in the event of the failure on the part of Developer to perform any of the terms, provisions, covenants or conditions of this Agreement to be performed by the Developer or to make any payment which Developer is obligated to make under the terms of this Agreement irrespective of whether such failure shall have occurred before or after the aforesaid date or shall have occurred before such date, but continued thereafter; and (ii) the provisions of this Section shall not be construed to deny any Department Store or render ineffective or limit in any way any right which such Department Store might otherwise have under this Agreement, because of a default on the part of the Developer."

VOL 8069 PAGE 709

12. Except as herein expressly changed, amended, modified or supplemented, the terms and conditions of the Operating Agreement shall be unaffected and shall continue and remain in full force and effect, and said Operating Agreement, as hereby amended, is hereby ratified and confirmed. If there shall appear a conflict between the terms and conditions of the Operating Agreement and this Amendment, then the terms and conditions of this Amendment shall control.

13. This Amendment may be executed in two (2) or more separate counterparts, each of which shall constitute an original document, but all of which together shall constitute one and the same document.

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed as of the day and year first hereinabove set forth.

WINDSOR PARK DEVELOPMENT COMPANY

By

MELVIN SIMON, GENERAL PARTNER

VOL 8069 PAGE 710

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE ME, the undersigned Notary Public in and for Marion County, Indiana, on this day personally appeared MELVIN SIMON, General Partner of WINDSOR PARK DEVELOPMENT COMPANY, a Texas limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged execution of the above and foregoing Amendment as a free and voluntary act for and on behalf of said limited partnership for the purpose therein contained.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS 15th day of APRIL, 1977.

NOTARY PUBLIC INDIANA

Notary Public

DIANA L. STUMP
Notary Public
State of Indiana
My Commission Expires: 9-5-78

My Commission Expires:

VOL 8069 PAGE 711

J. C. PENNEY PROPERTIES, INC.

By R E Montag
Vice President

ATTEST:
Assistant Secretary

STATE OF NEW YORK)
)
COUNTY OF NEW YORK)

On this the 26th day of April, 1977, before me CAROLE SCHIMKE, the undersigned officer, personally appeared R. E. MONTAG, who acknowledged himself to be the Vice President of J. C. PENNEY PROPERTIES, INC., a corporation, and that he as such Vice President, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as Vice President.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Carole Schimke
Notary Public

My Commission Expires:

CAROLE SCHIMKE
Notary Public, State of New York
No. 41-4525719
Qualified in Queens County
Certificate filed in New York County
Commission Expires March 30, 1978

VOL 8069 PAGE 712

MONTGOMERY WARD DEVELOPMENT CORPORATION

By _____
Vice President and Treasurer

ATTEST:

_____
Secretary

STATE OF ILLINOIS)
)
COUNTY OF COOK)

On this 21st day of April, 1977, before me Lauretta J. Moran, the undersigned officer, personally appeared Bruce B. Gobeyn, who acknowledged himself to be the Vice President and Treasurer of MONTGOMERY WARD DEVELOPMENT CORPORATION, a corporation, and that he as such Vice President and Treasurer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as Vice President and Treasurer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Lauretta J. Moran
Notary Public

My Commission Expires:

Nov. 13, 1978

LAURETTA J. MORAN NOTARY PUBLIC COOK COUNTY, ILL.

VOL 8069 PAGE 713

DILLARD DEPARTMENT STORES, INC.

By E Ray Wimp Jr
~~Vice President~~ Chairman

ATTEST:

Assistant Secretary

STATE OF ARKANSAS)
)
COUNTY OF PULASKI)

On this the 25 day of April, 1977, before me, Cecil H. Simmons the undersigned officer, personally appeared E. Ray Wimp Jr, who acknowledged himself to be the Vice President of DILLARD DEPARTMENT STORES, INC., a corporation, and that he as such Vice President, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as Vice President.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Cecil H. Simmons
Notary Public

My Commission Expires:
My Commission Expires Dec. 27, 1977

CONSTRUCTION DEVELOPERS, INCORPORATED

By E Ray Wimp Jr
Vice President

ATTEST:

Assistant Secretary

STATE OF ARKANSAS)
)
COUNTY OF PULASKI)

On this the 25 day of April, 1977, before me, Cecil H. Simmons the undersigned officer, personally appeared E. Ray Wimp Jr, who acknowledged himself to be the Vice President of CONSTRUCTION DEVELOPERS, INCORPORATED, a corporation, and that he as such Vice President, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as Vice President.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Cecil H. Simmons
Notary Public

My Commission Expires:
My Commission Expires Dec. 27, 1977

ALSTORES REALTY CORPORATION

By _____
Vice President

ATTEST:

_____
Assistant Secretary

STATE OF New York)
)
COUNTY OF New York)

On this the 26th day of April, 1977, before me, a Notary Public duly authorized in and for the said County in the State aforesaid to take acknowledgments, personally appeared F. J. Lombardi, residing at Harrison N.Y. to me known and known to me to be the Vice President of ALSTORES REALTY CORPORATION, one of the corporations described in the foregoing instrument, and acknowledged that as such officer, being authorized so to do, he executed the foregoing instrument on behalf of said corporation by subscribing the name of such corporation by himself as such officer and caused the corporate seal of said corporation to be affixed thereto, as his free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____
Notary Public

My Commission Expires:
EILEEN M. LUHRS
Notary Public, State of New York
No. 24-4625377
Qualified in Kings County
Cert. filed in New York County
Commission Expires March 30, 1978

RECORDERS MEMORANDUM
All or parts of the text on this page was not clearly legible for satisfactory recordation.

ALLIED STORES OF TEXAS, INC.

By _____
Vice President

ATTEST:

_____
Assistant Secretary

STATE OF New York)
)
COUNTY OF New York)

On this the 26th day of April, 1977, before me, a Notary Public duly authorized in and for the said County and State aforesaid to take acknowledgments, personally appeared _____, residing at 1290 Central Park South NY, NY. to me known and known to me to be the Vice President of ALLIED STORES OF TEXAS, INC., one of the corporations described in the foregoing instrument, and acknowledged that as such officer, being authorized so to do, he executed the foregoing instrument on behalf of said corporation by subscribing the name of such corporation by himself as such officer and caused the corporate seal of said corporation to be affixed thereto, as his free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____
Notary Public

EILEEN M. LUHRS
Notary Public, State of New York
No. 24-4625377
Qualified in Kings County
Cert. filed in New York County
Commission Expires March 30, 1978

My Commission Expires:

VOL 8069 PAGE 715

CONSENT AND SUBORDINATION

The undersigned hereby consents to the above and foregoing Amendment of the Easement and Operating Agreement referred to in such Amendment, to which this Consent and Subordination is attached, and hereby acknowledges and agrees that all of its right, title and interest as mortgagee of the Dillard Site (as such term is defined in the Easement and Operating Agreement) or as the beneficiary under a deed of trust on the Dillard Site, and all of its right, title and interest as the assignee under any assignment of leases affecting the Dillard Site, and the lien or liens of any such mortgage, deed of trust or assignment of leases, is now and shall be, at all times, subject and subordinate to all of the terms, conditions and provisions of said Easement and Operating Agreement, as changed, modified and amended by the foregoing Amendment.

IN WITNESS WHEREOF, the undersigned has caused this Consent and Subordination to be duly executed as of April 26, 1977.

AETNA LIFE INSURANCE COMPANY

By D. L. Tobler
VICE PRESIDENT

ATTEST:

Assistant Secretary

STATE OF CONNECTICUT)
) SS:
COUNTY OF HARTFORD)

Before me, the undersigned authority, on this day personally appeared D. L. Tobler, the Vice President of AETNA LIFE INSURANCE COMPANY, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said AETNA LIFE INSURANCE COMPANY, and that he executed the same as the act of said AETNA LIFE INSURANCE COMPANY for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 26th day of April, 1977.

Notary Public

My Commission Expires:

Frank A. Kelly Jr., Notary Public
Within and for the State of Connecticut
My Commission expires March 31, 1980.

CONSENT AND SUBORDINATION

The undersigned hereby consents to the above and foregoing Amendment of the Easement and Operating Agreement referred to in such Amendment, to which this Consent and Subordination is attached, and hereby acknowledges and agrees that all of its right, title and interest as mortgagee of the Developer Site (as such term is defined in the Easement and Operating Agreement) or as the beneficiary under a deed of trust on the Developer Site, and all of its right, title and interest as the assignee under any assignment of leases affecting the Developer Site, and the lien or liens of any such mortgage, deed of trust or assignment of leases, is now and shall be, at all times, subject and subordinate to all of the terms, conditions and provisions of said Easement and Operating Agreement, as changed, modified and amended by the foregoing Amendment.

IN WITNESS WHEREOF, the undersigned has caused this Consent and Subordination to be duly executed as of April 27, 1977.

AMERICAN FLETCHER MORTGAGE COMPANY, INC.

By J. E. Johnson V.P.

ATTEST: [illegible]

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, the undersigned authority, on this day personally appeared J. E. Johnson, the Vice President of AMERICAN FLETCHER MORTGAGE COMPANY, INC., known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said AMERICAN FLETCHER MORTGAGE COMPANY, INC., and that he executed the same as the act of said AMERICAN FLETCHER MORTGAGE COMPANY, INC., for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 27th day of April, 1977.

Genevieve McCutcheon
Genevieve McCutcheon Notary Public

My Commission Expires:
August 31, 1980

VOL 8069 PAGE 717

CONSENT AND SUBORDINATION

The undersigned hereby consents to the above and foregoing Amendment of the Easement and Operating Agreement referred to in such Amendment, to which this Consent and Subordination is attached, and hereby acknowledges and agrees that all of its right, title and interest as mortgagee of the Ward Site (as such term is defined in the Easement and Operating Agreement) or as the beneficiary under a deed of trust on the Ward Site, and all of its right, title and interest as the assignee under any assignment of leases affecting the Ward Site, and the lien or liens of any such mortgage, deed of trust or assignment of leases, is now and shall be, at all times, subject and subordinate to all of the terms, conditions and provisions of said Easement and Operating Agreement, as changed, modified and amended by the foregoing Amendment.

IN WITNESS WHEREOF, the undersigned has caused this Consent and Subordination to be duly executed as of April 27, 1977.

MASSACHUSETTS MUTUAL LIFE
INSURANCE COMPANY

By: J. C. Johnson V.P.

ATTEST: [illegible]

SEAL

STATE OF Indiana)
) SS:
COUNTY OF Marion)

Before me, the undersigned authority, on this day personally appeared J. C. Johnson, the Vice President of MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY, and that he executed the same as the act of said MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY for the purposes and consideration therein expressed and in the capacity therein stated.

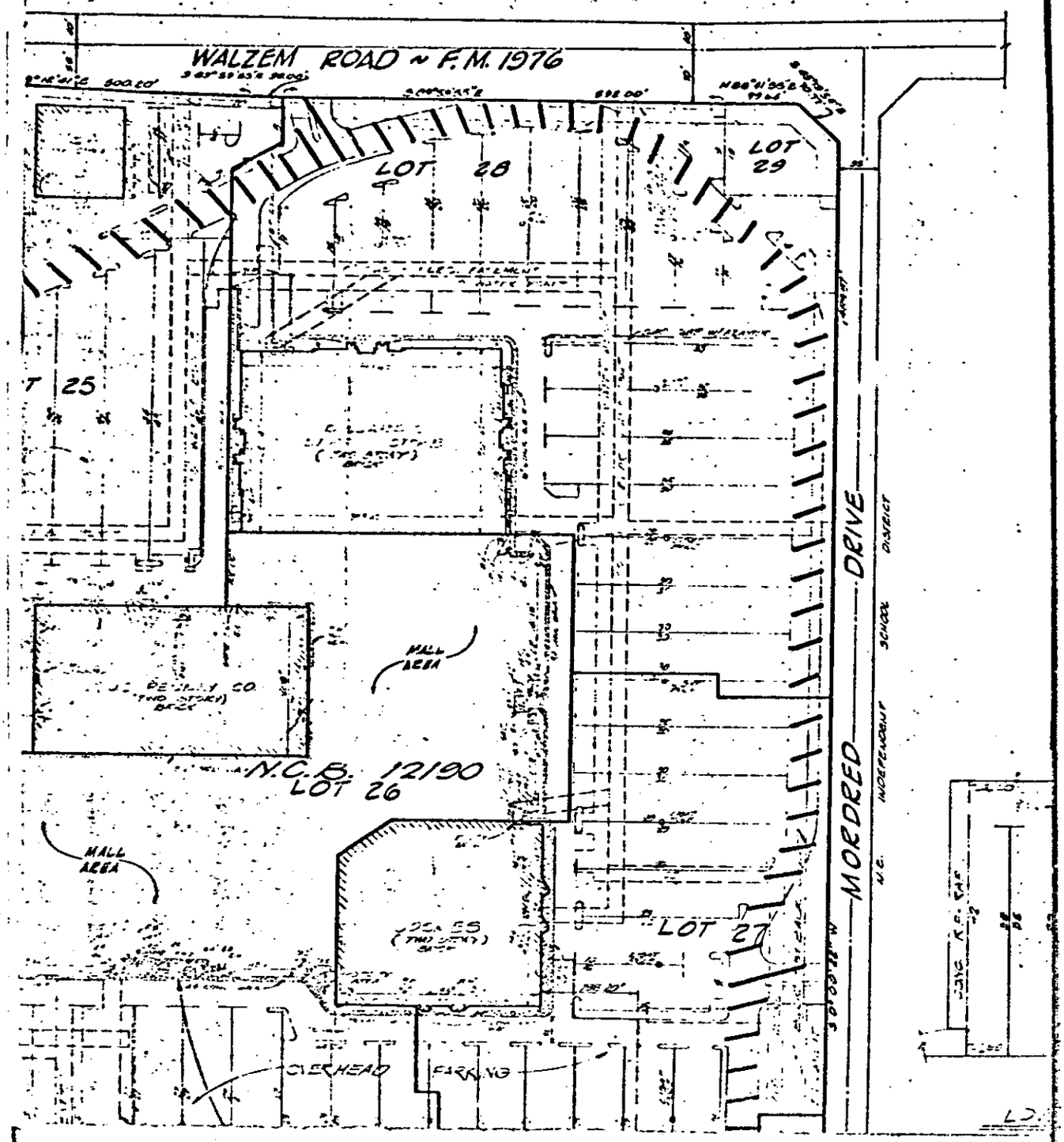
GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 27th day of April, 1977.

Genevieve McCutcheon
GENEVIEVE McCUTCHEON Notary Public

My Commission Expires:
August 31, 1980

SCALE: 1" = 100'
LOT 22
LOT 24
LOT 25
LOT 26
INTERSTATE 35 - LOOP 410
R = 152.75'
Δ = 85°22'00"
T = 147.53'
L = 238.06'
N 85°43'06" E
S 89°57'55" E
112.53'
S 88°12'41" E
N 87°21'06" E
50.00
Notes
RECIPROCAL MEMORANDUM
ALL THE PART THE TEXT ON THIS PAGE
BIG FOOT CLEAR... IS SATISFACTORY
C.A.M.T.C.

RECORDER'S MEMORANDUM:
ALL OR PARTS OF THE TEXT ON THIS PAGE WAS NOT CLEARLY LEGIBLE FOR SATISFACTORY RECORDATION



RECORDER'S MEMORANDUM:
ALL OR PARTS OF THE TEXT ON THIS PAGE
WAS NOT CLEARLEY LEGIBLE FOR SATISFACTORY
RECORDATION

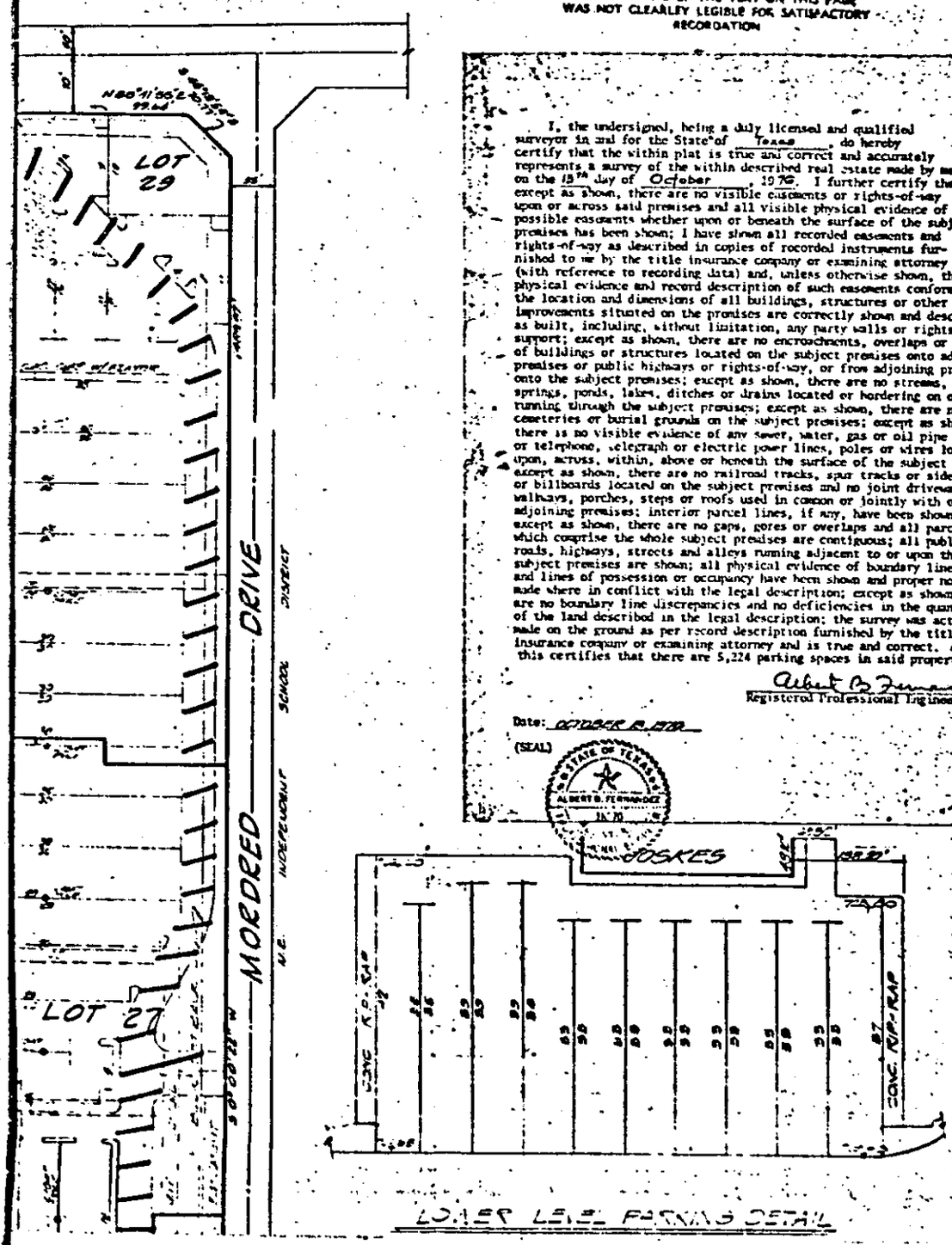
I, the undersigned, being a duly licensed and qualified surveyor in and for the State of Texas, do hereby certify that the within plat is true and correct and accurately represents a survey of the within described real estate made by me on the 15th day of October, 1970. I further certify that: except as shown, there are no visible easements or rights-of-way upon or across said premises and all visible physical evidence of possible easements whether upon or beneath the surface of the subject premises has been shown; I have shown all recorded easements and rights-of-way as described in copies of recorded instruments furnished to me by the title insurance company or examining attorney (with reference to recording data) and, unless otherwise shown, the physical evidence and record description of such easements conform; the location and dimensions of all buildings, structures or other improvements situated on the premises are correctly shown and described as built, including, without limitation, any party walls or rights of support; except as shown, there are no encroachments, overlaps or overhangs of buildings or structures located on the subject premises onto adjoining premises or public highways or rights-of-way, or from adjoining premises onto the subject premises; except as shown, there are no streams, rivers, springs, ponds, lakes, ditches or drains located or bordering on or running through the subject premises; except as shown, there are no cemeteries or burial grounds on the subject premises; except as shown; there is no visible evidence of any sewer, water, gas or oil pipe lines or telephone, telegraph or electric power lines, poles or wires located upon, across, within, above or beneath the surface of the subject premises; except as shown, there are no railroad tracks, spur tracks or side tracks or billboards located on the subject premises and no joint driveways, or walkways, porches, steps or roofs used in common or jointly with owners of adjoining premises; interior parcel lines, if any, have been shown and, except as shown, there are no gaps, gores or overlaps and all parcels which comprise the whole subject premises are contiguous; all public roads, highways, streets and alleys running adjacent to or upon the subject premises are shown; all physical evidence of boundary lines and lines of possession or occupancy have been shown and proper notation made where in conflict with the legal description; except as shown, there are no boundary line discrepancies and no deficiencies in the quantity of the land described in the legal description; the survey was actually made on the ground as per record description furnished by the title insurance company or examining attorney and is true and correct. Also this certifies that there are 5,224 parking spaces in said property.

Albert B. Fernandez
Registered Professional Engineer

Date: October 15, 1970

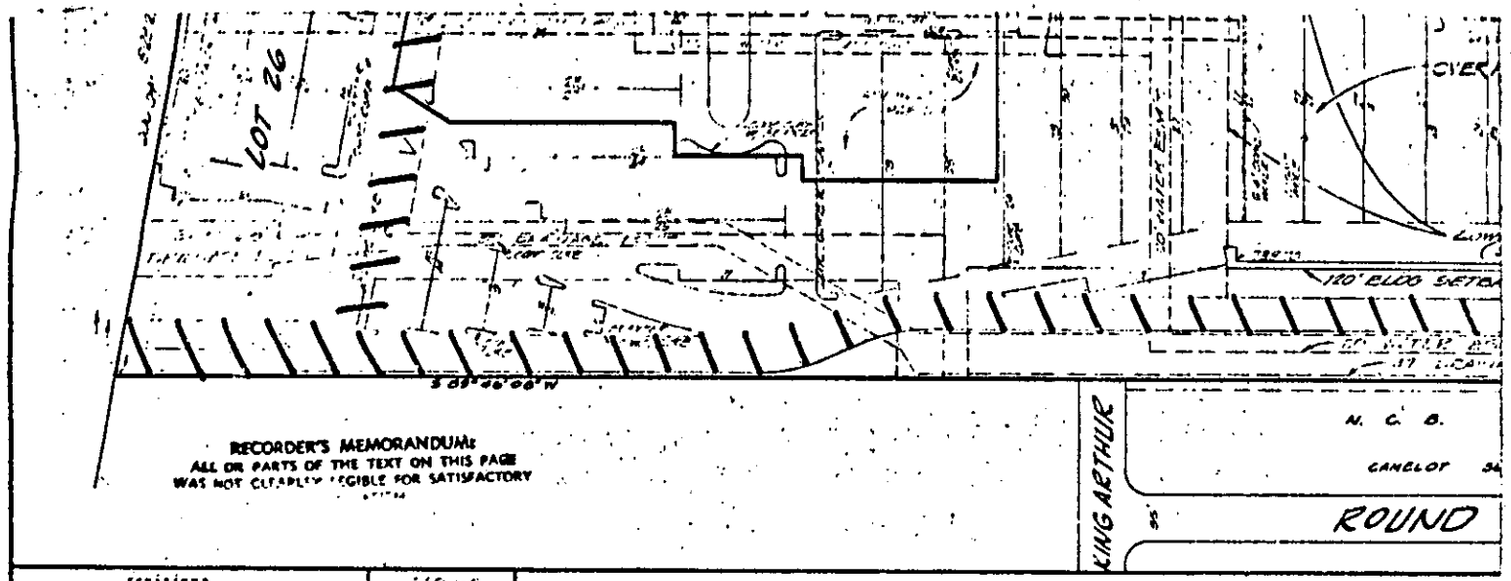
(SEAL)

STATE OF TEXAS
ALBERT B. FERNANDEZ
1470



LOWER LEVEL PARKING DETAIL

VOL 8069 PAGE 721

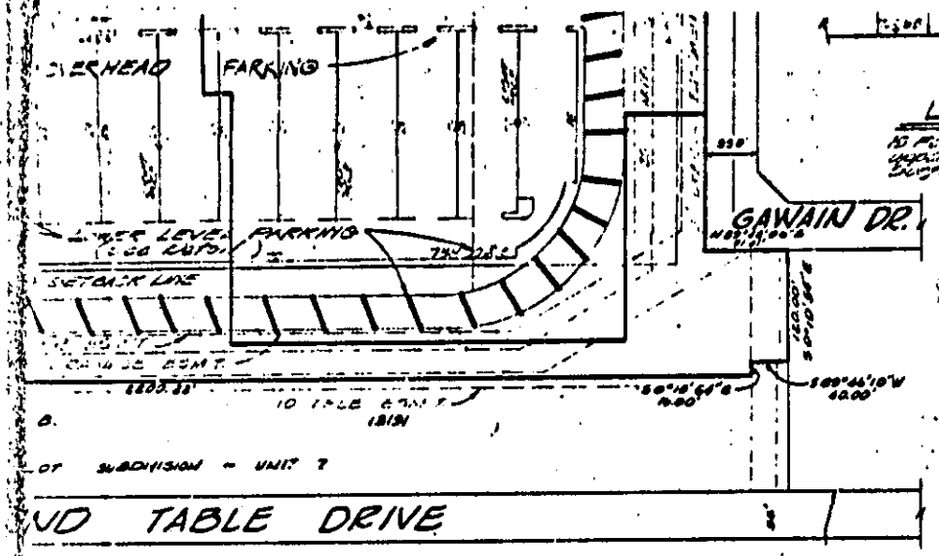


RECORDER'S MEMORANDUM:
ALL OR PARTS OF THE TEXT ON THIS PAGE
WAS NOT CLEARLY LEGIBLE FOR SATISFACTORY

revisions	

DRAWN BY C.E.
CHECKED BY A.F.F.

Groves, Fernandez, Barry, Tel
and Associates, Inc.
CONSULTING ENGINEERS / PLANNERS / LANDSCAPE ARCHITEC
9030 Wurzbach Road San Antonio, Tex



LOWER LEVEL PARKING DETAIL

EXHIBIT "A"

Telford
CHITECTS
Texas 78240

PERIMETER & BUILDING SURVEY
WINDSOR PARK MALL

SHEET 1 of 1 sheets

FILE 764748 VOL 8069 PG. 719-PG 724

RECORDERS MEMORANDUM
All or parts of the text on this page was not clearly legible for satisfactory recordation.

24.50

EXHIBIT "A"

Return to:
Stewart Title Company
P.O. Box 13350
San Antonio Texas
G.F.# 187981 - L Brycka

STATE OF TEXAS
COUNTY OF BEXAR

I hereby certify that this instrument was FILED on the date and at the time stamped hereon by me and was duly RECORDED in the Volume and Page of the DEED RECORDS of Bexar County, Texas as stamped hereon by me.

APR 29 1977

COUNTY CLERK
BEXAR COUNTY, TEXAS

FILED IN MY OFFICE
ROBERT D. GREEN
COUNTY CLERK BEXAR CO.
1977 APR 28 PM 2 55

VOL. 8069 PAGE 725

CHICAGO TITLE GF# 20021015-MD #19.00

Doc# 20020306002

ASSIGNMENT OF OPERATING AGREEMENT

FOR AND IN CONSIDERATION of the sum of ten ($10.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, SIMON PROPERTY GROUP (TEXAS), L.P., a Texas limited partnership, having an office at National City Center, 115 West Washington Street, Indianapolis, Indiana 46204 ("Assignor"), does hereby sell, assign, transfer and set over unto WINDSOR PARK MALL, L.L.C., a Texas limited liability company, having an office at 3901 Lewis P. Olds Wynd, Raleigh, North Carolina 27612 ("Assignee"), Assignor's interest (the "Assigned Interest") as a party to the agreement described in Schedule 1 annexed hereto ("Operating Agreement").

TO HAVE AND TO HOLD the Assigned Interest unto Assignee, its successors and assigns, forever.

This Assignment is made without representation or warranty, express or implied, by Assignor except that Assignor warrants and represents that it is the owner of the Assigned Interest, subject to all exceptions to title permitted under the Purchase and Sale Agreement dated December 7, 2001, by and between Assignor, as Seller, and E & W Properties, Inc., as Purchaser as amended by that certain First Amendment to Purchase and Sale Agreement dated January 8, 2002, and as further amended by that certain Second Amendment to Purchase and Sale Agreement dated February 1, 2002, and that Third Amendment to Purchase and Sale Agreement dated February 28, 2002, all as assigned by E & W Properties, Inc., to Assignee, as Purchaser, and that Assignor has not heretofore assigned or encumbered the Assigned Interest. Assignee, for itself and its successors and assigns, (i) hereby accepts the foregoing assignment, (ii) agrees to, and hereby does, assume and agree to keep, pay, perform, observe and discharge all of the terms, covenants, conditions, agreements, provisions and obligations contained in the Operating Agreement to be kept, paid, performed, observed and discharged by Assignor, as owner thereunder and arising or accruing from and after the date hereof and (iii) agrees to, and hereby does, indemnify and hold harmless Assignor from and against all claims, liabilities, damages and expenses (including, without limitation, reasonable attorneys' fees and disbursements) which may be asserted against, imposed on or incurred by Assignor by reason of Assignee's failure to perform any of its obligations under clause (ii) above.

[The Remainder of This Page Intentionally Left Blank]

VOL 9345 PG 1911

IN WITNESS WHEREOF, this Assignment has been executed by Assignor and Assignee as of the 15 day of April, 2002.

ASSIGNOR:

SIMON PROPERTY GROUP (TEXAS), L.P., a Texas limited partnership

By: GOLDEN RING MALL COMPANY LIMITED PARTNERSHIP, an Indiana limited partnership, the General Partner

By: SIMON PROPERTY GROUP (DELAWARE), INC., a Delaware corporation, the General Partner

By: _____
David Simon
Chief Executive Officer

ASSIGNEE:

WINDSOR PARK MALL, L.L.C., a Texas limited liability company

By: _____
Name: _____
Title: _____

VOL 9345 PG 1912

IN WITNESS WHEREOF, this Assignment has been executed by Assignor and Assignee as of the 15 day of April, 2002.

ASSIGNOR:

SIMON PROPERTY GROUP (TEXAS), L.P., a Texas limited partnership

By: GOLDEN RING MALL COMPANY LIMITED PARTNERSHIP, an Indiana limited partnership, the General Partner

By: SIMON PROPERTY GROUP (DELAWARE), INC., a Delaware corporation, the General Partner

By: _____

ASSIGNEE:

WINDSOR PARK MALL, L.L.C., a Texas limited liability company

By: _____
Name: Haywood E. Whitehead
Title: Manager Member

VOL 9345 PG 1913

STATE OF INDIANA }
} SS:
COUNTY OF MARION }

Before me, a Notary Public in and for said County and State, personally appeared David Simon to me personally known as the Chief Executive Officer of SIMON PROPERTY GROUP (DELAWARE), INC., a Delaware corporation, the General Partner of GOLDEN RING MALL COMPANY LIMITED PARTNERSHIP, an Indiana limited partnership, the General Partner of SIMON PROPERTY GROUP (TEXAS), L.P., a Texas limited partnership, who acknowledged his execution of the foregoing instrument for and on behalf of said corporation by authority of its Board of Directors.

WITNESS my hand and Notarial seal this 11 day of April, 2002.

Kathleen A. Ray
Notary Public

NOTARY PUBLIC SEAL INDIANA

KATHLEEN A. RAY
Res. of Marion Co.
Comm. Exp. 5-12-2008

STATE OF _____}
} SS:
COUNTY OF _____}

Before me, a Notary Public in and for said County and State, personally appeared _____ to me personally known as the _____ of WINDSOR PARK MALL, L.L.C., a Texas limited liability company, who executed the foregoing instrument for and on behalf of said corporation by authority of its Board of Directors.

WITNESS my hand and Notarial seal this ____ day of _____, 2002.

_____
Notary Public

VOL 9345 PG 1914

STATE OF INDIANA }
} SS:
COUNTY OF MARION }

Before me, a Notary Public in and for said County and State, personally appeared _____ to me personally known as the _____ of SIMON PROPERTY GROUP (DELAWARE), INC., a Delaware corporation, the General Partner of GOLDEN RING MALL COMPANY LIMITED PARTNERSHIP, an Indiana limited partnership, the General Partner of SIMON PROPERTY GROUP (TEXAS), L.P., a Texas limited partnership, who acknowledged his execution of the foregoing instrument for and on behalf of said corporation by authority of its Board of Directors.

WITNESS my hand and Notarial seal this ____ day of _____, 2002.

_____
Notary Public

STATE OF NC }
} SS:
COUNTY OF Wake }

Before me, a Notary Public in and for said County and State, personally appeared Haywood E Whichard to me personally known as the Manager Member of WINDSOR PARK MALL, L.L.C., a Texas limited liability company, who executed the foregoing instrument for and on behalf of said corporation by authority of its Board of Directors.

WITNESS my hand and Notarial seal this 9 day of April, 2002.

Notary Public

My Commission Expires 5-3-2005

CHAS SEOGGINS NOTARY PUBLIC DURHAM COUNTY, NC

VOL 9345 PG 1915

ASSIGNMENT OF OPERATING AGREEMENT
Schedule 1

Terms, conditions of and rights of other parties in and to Easement and Operating Agreement by and between Windsor Park Development Company, a Texas limited partnership, J.C. Penney Properties Inc., a Delaware corporation, Montgomery Ward Development Corporation, a Delaware corporation, Construction Developers, Incorporated, an Arkansas corporation, Dillard Department Stores Inc., a Delaware corporation, Alstores Realty Corporation, a Delaware corporation, and Allied Stores of Texas, Inc., a Texas corporation, dated September 10, 1974 and recorded October 1, 1974 in Volume 7451, Page 649, Deed Records of Bexar County, Texas, amended by Modification of Easement and Operating Agreement by and between Windsor Park Development Company, a Texas limited partnership, J.C. Penney Properties Inc., a Delaware corporation, Montgomery Ward Development Corporation, a Delaware corporation, Construction Developers, Incorporated, an Arkansas corporation, Dillard Department Stores Inc., a Delaware corporation, Alstores Realty Corporation, a Delaware corporation, and Allied Stores of Texas, Inc., a Texas corporation, dated May 5, 1975 and recorded in Volume 7693, Page 199, Deed Records of Bexar County, Texas, further amended by Second Amendment of Easement and Operating Agreement by and between Windsor Park Development Company, a Texas limited partnership, J.C. Penney Properties Inc., a Delaware corporation, Montgomery Ward Development Corporation, a Delaware corporation, Construction Developers, Incorporated, an Arkansas corporation, Dillard Department Stores Inc., a Delaware corporation, Alstores Realty Corporation, a Delaware corporation, and Allied Stores of Texas, Inc., a Texas corporation, dated April 15, 1977 and recorded in Volume 8069, Page 704 , Deed Records of Bexar County, Texas, further amended by Third Amendment of Easement and Operating Agreement, dated July 16, 1985 and recorded in Volume 4820, Page 1829, Real Property Records of Bexar County, Texas, and further amended by Fourth Amendment of Easement and Operating Agreement by and between Windsor Park Development Company, a Texas limited partnership, J.C. Penney Properties Inc., a Delaware corporation, Montgomery Ward Development Corporation, a Delaware corporation, Construction Developers, Incorporated, an Arkansas corporation, Dillard Department Stores Inc., a Delaware corporation, and Joske's San Antonio Real Estate Company, a Delaware corporation, dated November 20, 1990 and recorded in Volume 5004, Page 585, Deed Records of Bexar County, Texas.

VOL 9345 PG 1916

After Recording send
Mary Durham
11467 Huebner Rd
S.A TX. 78230

Any provision herein which restricts the sale, or use of the described real property because of race is invalid and unenforceable under Federal law
STATE OF TEXAS, COUNTY OF BEXAR
I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me and was duly RECORDED in the Official Public Record of Real Property of Bexar County, Texas on:

APR 1 5 2002

COUNTY CLERK BEXAR COUNTY, TEXAS

Doc# 20020306002
Pages 7
04/15/2002 05:01:04 PM
Filed & Recorded in
Official Records of
BEXAR COUNTY
GERRY RICKHOFF
COUNTY CLERK
Fees $21.00

VOL 9345 PG 1917

Fidelity National Title GF# 04-4300 1764

LT1-77-20050059258-1

SCANNED

ASSIGNMENT AND ASSUMPTION OF OPERATING AGREEMENTS

THIS ASSIGNMENT AND ASSUMPTION OF OPERATING AGREEMENTS is entered into as of the 11TH day of March, 2005 (this "Agreement"), by and between Dillard Texas Operating Limited Partnership, a Texas limited partnership ("Assignor"), and Renaissance Mall, LLC, a Texas limited liability company ("Assignee").

WITNESSETH:

WHEREAS, in accordance with, and pursuant to, that certain Sale and Purchase Agreement and Escrow Instructions dated as of the 14th day of December, 2004 (the "PSA"), between Assignor and Assignee, Assignor desires to quitclaim its interest in certain "Operating Agreements" (meaning all of the agreements and instruments described in Schedule 1 attached hereto), upon the terms and conditions set forth herein; and

WHEREAS, the Operating Agreements pertain to certain real property more particularly described on Exhibit A attached hereto (the "Property").

NOW, THEREFORE, in consideration of the promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Assignor hereby quitclaims and assigns to Assignee, its successors and assigns, all its rights, title and interest, if any, in, to and under the Operating Agreements upon the terms and conditions set forth herein.

2. Assignee hereby accepts the foregoing assignment from Assignor and hereby assumes all Assignor's liabilities and agrees to perform and discharge all obligations of Assignor under the Operating Agreements.

3. Assignee hereby agrees to indemnify and hold harmless Assignor and Assignor's successors and assigns, and their parents, subsidiaries, affiliates and their officers, directors, shareholders, members, partners, employees, and agents from and against any mechanics' lien or claim therefor, any claim, cause of action, lawsuit, damage, liability, loss, cost or expense including, without limitation, reasonable attorneys' fees (collectively, "Claims") arising out of or in any way relating to the Operating Agreements; provided, however, that the within indemnity shall not apply to the extent that such Claims relate to any time period prior to the Closing, as such term is defined in the PSA.

4. This Agreement may not be amended, modified or terminated except by an instrument, in writing, executed by the parties hereto.

5. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

6. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. The parties do not intend to confer any

LT2-11286-1402-9

benefit hereunder on any person, firm or corporation other than the parties hereto and their respective successors and assigns.

7. This Agreement may be executed in two or more counterparts and all counterparts so executed shall for all purposes constitute one agreement, binding on all the parties hereto, notwithstanding that all parties shall not have executed the same counterpart.

8. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Property is located, without giving effect to any conflicts of law rule or principle that might require the application of another jurisdiction.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

ASSIGNOR:

Dillard Texas Operating Limited Partnership,
a Texas limited partnership

By: Dillard's, Inc.,
its general partner

By:_____
James W. Cherry, Jr.
Vice President

ASSIGNEE:

Renaissance Mall, LLC,
a Texas limited liability company

By: Misuma Investments, LLC,
a California limited liability company,
its sole managing member

By:_____
Allan Davidov, Managing Member

benefit hereunder on any person, firm or corporation other than the parties hereto and their respective successors and assigns.

7. This Agreement may be executed in two or more counterparts and all counterparts so executed shall for all purposes constitute one agreement, binding on all the parties hereto, notwithstanding that all parties shall not have executed the same counterpart.

8. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Property is located, without giving effect to any conflicts of law rule or principle that might require the application of another jurisdiction.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

ASSIGNOR:

Dillard Texas Operating Limited Partnership,
a Texas limited partnership

By: Dillard's, Inc.,
its general partner

By:_____
James W. Cherry, Jr.
Vice President

ASSIGNEE:

Renaissance Mall, LLC,
a Texas limited liability company

By: Misuma Investments, LLC,
a California limited liability company,
its sole managing member

By:_____
Allan Davidov, Managing Member

STATE OF ARKANSAS §
§ ss.
COUNTY OF _____ §

The foregoing Assignment and Assumption of Operating Agreements was acknowledged before me this _____ day of March, 2005, by James W. Cherry, Jr., Vice President of Dillard's, Inc., a Delaware corporation and General Partner of Dillard Texas Operating Limited Partnership, on behalf of said corporation.

_____
Notary Public
Name:_____
(typed, printed or stamped)

[SEAL]

My appointment expires:

STATE OF California §
§ ss.
COUNTY OF Los Angeles §

The foregoing Assignment and Assumption of Operating Agreements was acknowledged before me this 10th day of March, 2005, by Allan Davidov, managing member of Misuma Investments, LLC, the sole managing member of Renaissance Mall, LLC, a Texas limited liability company, on behalf of said limited liability company.

_____
Notary Public
Name:_____
(typed, printed or stamped)

ROBERT DICKSTEIN
NOTARY PUBLIC - CALIFORNIA
COMMISSION # 1526607
LOS ANGELES COUNTY
My Comm. Exp. November 13, 2008

[SEAL]

My appointment expires:

STATE OF ARKANSAS §
§ ss.
COUNTY OF Pulaski §

The foregoing Assignment and Assumption of Operating Agreements was acknowledged before me this 11th day of March, 2005, by James W. Cherry, Jr., Vice President of Dillard's, Inc., a Delaware corporation and General Partner of Dillard Texas Operating Limited Partnership, on behalf of said corporation.

Chas S. Harmon

Notary Public
Name: Charles S. Harmon
(typed, printed or stamped)

CHARLES S. HARMON
MY COMMISSION EXPIRES
May 20, 2013
NOTARY PUBLIC
PULASKI COUNTY, STATE OF ARKANSAS

[SEAL]

My appointment expires:

STATE OF _____ §
§ ss.
COUNTY OF _____ §

The foregoing Assignment and Assumption of Operating Agreements was acknowledged before me this _____ day of March, 2005, by Allan Davidov, managing member of Misuma Investments, LLC, the sole managing member of Renaissance Mall, LLC, a Texas limited liability company, on behalf of said limited liability company.

_____

Notary Public
Name:_____
(typed, printed or stamped)

[SEAL]

My appointment expires:

Schedule 1

Operating Agreements

1. Easement and Operating Agreement dated September 10, 1974, by and among Windsor Park Development Company, J.C. Penney Properties, Inc., Montgomery Ward Development Corporation, Construction Developers, Incorporated, Dillard Department Stores, Inc., Alstores Realty Corporation and Allied Stores of Texas, Inc., as recorded in the official records of Bexar County, Texas (the "Records") in Volume 7451 at Page 649.

2. Supplemental Agreement dated September 10, 1974, by and among Windsor Park Development Company, Construction Developers, Incorporated, and Dillard Department Stores, Inc.

3. Supplemental Agreement dated September 10, 1974, by and among Windsor Park Development Company, Allied Stores of Texas, Inc., and Alstores Realty Corporation

4. Letter dated September 10, 1974, from Windsor Park Development Company to Allied Stores of Texas, Inc., and Alstores Realty Corporation

5. Letter Agreement dated September 10, 1974, by and among Windsor Park Development Company, Allied Stores of Texas, Inc., and Alstores Realty Corporation

6. Letter Agreement dated September 10, 1974, by and among Windsor Park Development Company, Melvin Simon & Associates, Inc., J.C. Penney Properties, Inc., Montgomery Ward Development Corporation, Dillard Department Stores, Inc., Construction Developers, Incorporated, Allied Stores of Texas, Inc., and Alstores Realty Corporation

7. Letter Agreement dated September 10, 1974, by and among Montgomery Ward & Co., Incorporated, Windsor Park Development Company, Dillard Department Stores, Inc., J.C. Penney Properties, Inc., and Allied Stores of Texas, Inc.

8. Modification of Easement and Operating Agreement dated May 5, 1975, by and among Windsor Park Development Company, J.C. Penney Properties, Inc., Montgomery Ward Development Corporation, Construction Developers, Incorporated, Dillard Department Stores, Inc., Alstores Realty Corporation, and Allied Stores of Texas, Inc.

9. Letter Agreement dated February 17, 1976, by and among J.C. Penney Properties, Inc., Windsor Park Development Company, Montgomery Ward Development Corporation, Construction Developers, Incorporated, Dillard Department Stores, Inc., Alstores Realty Corporation, and Allied Stores of Texas

10. Second amendment of Easement and Operating Agreement dated April 15, 1977, by and among Windsor Park Development Company, J.C. Penney Properties, Inc., Montgomery Ward Development Corporation, Construction Developers, Incorporated, Dillard Department Stores, Inc., Alstores Realty Corporation, and Allied Stores of Texas, Inc. and recorded in the Records as File No. 764748 and in Volume 8069 at Page 704

11. Indemnity dated March 14, 1984, by Mervyn's, a California corporation

12. Letter Agreement dated August 8, 1984, by and among Alstores Realty Corporation, Melvin Simon & Associates, Inc., and Windsor Park Development Company

13. Letter Agreement dated August 28, 1984, by and among Construction Developers, Incorporated, Melvin Simon & Associates, Inc., and Windsor Park Development Company

14. Cross Easement Agreement dated July 16, 1985, by and among North East Independent School District, Windsor Park Development Company and Construction Developers, Incorporated and recorded in the Records as File No. 1920339

15. Third Amendment of Easement and Operating Agreement dated July 16, 1985, by and among Windsor Park Development Company, J.C. Penney Properties, Inc., Montgomery Ward Development Corporation, Construction Developers, Incorporated, Dillard Department Stores, Inc., Alstores Realty Corporation and Alstores-East, Inc., and recorded in the Records in Volume 4820 at Page 1829

16. Letter dated March 29, 1988, from J.C. Penney Company, Inc., and J.C. Penney Properties, Inc.

17. First Amendment to First Supplemental Agreement dated October 14, 1988, by and between Windsor Park Development Company and Joske San Antonio Real Estate Company

18. Letter dated January 17, 1989, from J. C. Penney Company, Inc., and J.C. Penney Properties, Inc.

19. Letter Agreement dated January 24, 1990, by and between Melvin Simon and Associates, Inc., and Dillard Department Stores, Inc.

20. Fourth Amendment of Easement and Operating Agreement dated November 30, 1990, by and among Windsor Park Development Company Limited Partnership, J.C. Penney Properties, Inc., Montgomery Ward Development Corporation, Construction Developers, Incorporated, Dillard Department Stores, Inc., and Joske's San Antonio Real Estate Company recorded in the Records as File No. 2040877

21. Letter dated December 10, 1992, from J.C. Penney Company, Inc.

22. Letter dated December 20, 1993, from Windsor Park Development Company Limited Partnership and Simon Property Group (Texas), L.P.

23. Assignment and Assumption of Operating Agreement dated February 2, 1996, by and between Joske's San Antonio Real Estate Company and Dillard Texas Operating Limited Partnership and recorded in the Records at Volume b657 at Page 1460

24. Assignment and Assumption of Operating Agreement dated February 2, 1996, by and between Construction Developers, Incorporated, and Dillard Texas Operating Limited Partnership and recorded in the Records at Volume b657 at Page 1450

25. Assignment and Assumption of Operating Agreement dated February 2, 1996, by and between Dillard Department Stores, Inc., and Dillard Texas Operating Limited Partnership and recorded in the Records at Volume b657 at Page 1455

26. Letter dated April 16, 2002, from Simon Property Group (Texas), L.P., and Windsor Park Mall, L.L.C.

Exhibit A

Legal Description

GF No. 04-43001764

EXHIBIT "B"

TRACT I

Lots 37 and 38, New City Block 12190, SIMON SUBDIVISION, in the City of San Antonio, Bexar County, Texas, according to plat thereof recorded in Volume 9522, Pages 107-108 of the Deed and Plat Records of Bexar County, Texas.

TRACT II

A non-exclusive right, privilege and easement to use the Common Facilities portions of the Windsor Park Mall Shopping Center for the respective purposes for which the Common Facilities are designed, as identified and granted by that certain Easement And Operating Agreement dated September 10, 1974, recorded in Volume 7451, Page 649 of the Deed Records of Bexar County, Texas, as amended by that certain Modification Of Easement And Operating Agreement dated MAy 5, 1975, recorded in Volume 7693, Page 199 of the Deed Records, as amended by that certain Second Amendment Of Easement And Operating Agreement dated April 15, 1977, recorded in Volume 8069, Page 704 of the Deed Records, as amended by that certain Third Amendment Of Easement And Operating Agreement dated July 16, 1985, recorded in Volume 4820, Page 1829 of the Real Property Records, and as amended by that certain Fourth Amendment Of Easement And Operating Agreement dated November 20, 1990, recorded in Volume 5004, Page 585 of the Real Property Records of Bexar County, Texas.

TRACT III

A non-exclusive, right, privilege and easement for ingress and egress for the passage of motor vehicles and pedestrians upon, across and over certain parcels or tracts of land as identified and granted in that certain Cross Easement Agreement dated July 16, 1985, recorded in Volume 4820, Page 1885 of the Real Property Records of Bexar County, Texas.

Any provision herein which restricts the sale, or use of the described real property because of race is invalid and unenforceable under Federal law
STATE OF TEXAS, COUNTY OF BEXAR
I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me and was duly RECORDED in the Official Public Record of Real Property of Bexar County, Texas on:

MAR 21 2005

COUNTY CLERK BEXAR COUNTY, TEXAS

Doc# 20050059258 Fees: $30.00
03/21/2005 12:08PM # Pages 9
Filed & Recorded in the Official Public Records of BEXAR COUNTY
GERRY RICKHOFF COUNTY CLERK

RETURN TO:
ALAMO TITLE COMPANY
10010 SAN PEDRO #100
SAN ANTONIO, TEXAS 78216
GF# 0675014121 BICOY

ATC-ADMIN/BICOY

ASSIGNMENT AND ASSUMPTION OF OPERATING AGREEMENTS

THIS ASSIGNMENT AND ASSUMPTION OF OPERATING AGREEMENTS is entered into as of the 9 day of January, 2007 (this "Agreement"), by and between **RENAISSANCE JCP INVESTMENT, L.L.C.**, an Oregon limited liability company ("Assignor"), and **CITY OF WINDCREST ECONOMIC DEVELOPMENT CORPORATION** ("Assignee").

WITNESSETH:

WHEREAS, in accordance with, and pursuant to, that certain Property Sale Agreement dated December 29, 2006 (the "PSA"), between Assignor and Assignee, Assignor desires to transfer its interest in certain "Operating Agreements" (meaning all of the agreements and instruments described in Schedule 1 attached hereto), upon the terms and conditions set forth herein; and

WHEREAS, the Operating Agreements pertain to certain real property more particularly described on Exhibit A attached hereto (the "Property"), and certain other property.

NOW, THEREFORE, in consideration of the promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Assignor hereby transfers and assigns to Assignee, its successors and assigns, all its rights, title and interest, if any, in, to and under the Operating Agreements upon the terms and conditions set forth herein.

2. Assignee hereby accepts the foregoing assignment from Assignor and hereby assumes all Assignor's liabilities and agrees to perform and discharge all obligations of Assignor under the Operating Agreements.

3. Assignee hereby agrees to indemnify and hold harmless Assignor and Assignor's successors and assigns, and their parents, subsidiaries, affiliates and their officers, directors, shareholders, members, partners, employees, and agents from and against any mechanics' lien or claim therefor, any claim, cause of action, lawsuit, damage, liability, loss, cost or expense including, without limitation, reasonable attorneys' fees (collectively, "Claims") arising out of or in any way relating to the Operating Agreements; provided, however, that the within indemnity shall not apply to the extent that such Claims relate to any time period prior to the Closing, as such term is defined in the PSA.

4. This Agreement may not be amended, modified or terminated except by an instrument, in writing, executed by the parties hereto.

5. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

6. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. The parties do not intend to confer any benefit hereunder on any person, firm or corporation other than the parties hereto and their respective successors and assigns.

7. This Agreement may be executed in two or more counterparts and all counterparts so executed shall for all purposes constitute one agreement, binding on all the parties hereto, notwithstanding that all parties shall not have executed the same counterpart.

8. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Property is located, without giving effect to any conflicts of law rule or principle that might require the application of another jurisdiction.

IN WITNESS V/HEREOF, the parties hereto have executed this Agreement as of the date first above written.

ASSIGNOR:

RENAISSANCE JCP INVESTMENT, L.L.C., an Oregon limited liability company

By: _____
Oved Anter, Sole Member

ASSIGNEE:

CITY OF WINDCREST ECONOMIC DEVELOPMENT CORPORATION

By: _____
F.R. Cain, City Administrator
City of Windcrest
8601 Midcrown Drive
Windcrest, Texas 78239
210-655-0022 ext. 212

6. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. The parties do not intend to confer any benefit hereunder on any person, firm or corporation other than the parties hereto and their respective successors and assigns.

7. This Agreement may be executed in two or more counterparts and all counterparts so executed shall for all purposes constitute one agreement, binding on all the parties hereto, notwithstanding that all parties shall not have executed the same counterpart.

8. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Property is located, without giving effect to any conflicts of law rule or principle that might require the application of another jurisdiction.

IN WITNESS W/HEREOF, the parties hereto have executed this Agreement as of the date first above written.

ASSIGNOR:

RENAISSANCE JCP INVESTMENT, L.L.C., an Oregon limited liability company

By: _____
Oved Anter, Sole Member

ASSIGNEE:

CITY OF WINDCREST ECONOMIC DEVELOPMENT CORPORATION

By: _____
F.R. Cain, City Administrator
City of Windcrest
8601 Midcrown Drive
Windcrest, Texas 78239
210-655-0022 ext. 212

STATE OF California §
§
COUNTY OF Los Angeles §

The foregoing Assignment and Assumption of Operating Agreements was acknowledged before me this 9th day of January, 2007, by Oved Anter, Sole Member of **RENAISSANCE JCP INVESTMENT, L.L.C.**, an Oregon limited liability company, on its behalf.

JONI M. SAND
Commission # 1610578
Notary Public - California
Los Angeles County
My Comm. Expires Oct 29, 2009

Joni M. Sand
Notary Public, State of California

STATE OF TEXAS §
§
COUNTY OF BEXAR §

The foregoing Assignment and Assumption of Operating Agreements was acknowledged before me this _____ day of January, 2007, by F.R. Cain, City Administrator of **CITY OF WINDCREST ECONOMIC DEVELOPMENT CORPORATION**, on its behalf.

_____
Notary Public, State of Texas

STATE OF California §
§
COUNTY OF Los Angeles §

The foregoing Assignment and Assumption of Operating Agreements was acknowledged before me this 9th day of January, 2007, by Oved Anter, Sole Member of **RENAISSANCE JCP INVESTMENT, L.L.C.**, an Oregon limited liability company, on its behalf

JONI M SAND
Commission # 1610578
Notary Public - California
Los Angeles County
My Comm. Expires Oct 29, 2009

Joni M. Sand
Notary Public, State of California

STATE OF TEXAS §
§
COUNTY OF BEXAR §

The foregoing Assignment and Assumption of Operating Agreements was acknowledged before me this 12th day of January, 2007, by F.R. Cain, City Administrator of **CITY OF WINDCREST ECONOMIC DEVELOPMENT CORPORATION**, on its behalf.

HEATHER MICHELLE WEIDENBACH
NOTARY PUBLIC
State of Texas
Comm. Exp. 01-09-2010

Heather Michelle Weidenbach
Notary Public, State of Texas

SCHEDULE 1

OPERATING AGREEMENTS

1. Easement and Operating Agreement dated September 10, 1974, by and among Windsor Park Development Company, J.C. Penney Properties, Inc., Montgomery Ward Development Corporation, Construction Developers, Incorporated, Dillard Department Stores, Inc., Alstores Realty Corporation and Allied Stores of Texas, Inc., as recorded in the official records of Bexar County, Texas (the "Records") in Volume 7451 at Page 649.

2. Supplemental Agreement dated September 10, 1974, by and among Windsor Park Development Company, Construction Developers, Incorporated, and Dillard Department Stores, Inc.

3. Supplemental Agreement dated September 10, 1974, by and among Windsor Park Development Company, Allied Stores of Texas, Inc., and Alstores Realty Corporation.

4. Letter dated September 10, 1974, from Windsor Park Development Company to Allied Stores of Texas, Inc., and Alstores Realty Corporation.

5. Letter Agreement dated September 10, 1974, by and among Windsor Park Development Company, Allied Stores of Texas, Inc., and Alstores Realty Corporation.

6. Letter Agreement dated September 10, 1974, by and among Windsor Park Development Company, Melvin Simon & Associates, Inc., J.C. Penney Properties, Inc., Montgomery Ward Development Corporation, Dillard Department Stores, Inc., Construction Developers, Incorporated, Allied Stores of Texas, Inc., and Alstores Realty Corporation.

7. Letter Agreement dated September 10, 1974, by and among Montgomery Ward & Co., Incorporated, Windsor Park Development Company, Dillard Department Stores, Inc., J.C. Penney Properties, Inc., and Allied Stores of Texas, Inc.

8. Modification of Easement and Operating Agreement dated May 5, 1975, by and among Windsor Park Development Company, J.C. Penney Properties, Inc., Montgomery Ward Development Corporation, Construction Developers, Incorporated, Dillard Department Stores, Inc., Alstores Realty Corporation, and Allied Stores of Texas, Inc.

9. Letter Agreement dated February 17, 1976, by and among J.C. Penney Properties, Inc., Windsor Park Development Company, Montgomery Ward Development Corporation, Construction Developers, Incorporated, Dillard Department Stores, Inc., Alstores Realty Corporation, and Allied Stores of Texas.

10. Second Amendment of Easement and Operating Agreement dated April 15, 1977, by and among Windsor Park Development Company, J.C. Penney Properties, Inc., Montgomery Ward Development Corporation, Construction Developers, Incorporated, Dillard

Department Stores, Inc., Alstores Realty Corporation, and Allied Stores of Texas, Inc. and recorded in the Records as File No. 764748 and in Volume 8069 at Page 704.

11. Indemnity dated March 14, 1984, by Mervyn's, a California corporation.

12. Letter Agreement dated August 8, 1984, by and among Alstores Realty Corporation, Melvin Simon & Associates, Inc., and Windsor Park Development Company.

13. Letter Agreement dated August 28, 1984, by and among Construction Developers, Incorporated, Melvin Simon & Associates, Inc., and Windsor Park Development Company.

14. Cross Easement Agreement dated July 16, 1985, by and among North East Independent School District, Windsor Park Development Company and Construction Developers, Incorporated and recorded in the Records as File No. 1920339.

15. Third Amendment of Easement and Operating Agreement dated July 16, 1985, by and among Windsor Park Development Company, J.C. Penney Properties, Inc., Montgomery Ward Development Corporation, Construction Developers, Incorporated, Dillard Department Stores, Inc., Alstores Realty Corporation and Alstores-East, Inc., and recorded in the Records in Volume 4820 at Page 1829.

16. Letter dated March 29, 1988, from J.C. Penney Company, Inc., and J.C. Penney Properties, Inc.

17. First Amendment to First Supplemental Agreement dated October 14, 1988, by and between Windsor Park Development Company and Joske San Antonio Real Estate Company.

18. Letter dated January 17, 1989, from J. C. Penney Company, Inc., and J.C. Penney Properties, Inc.

19. Letter Agreement dated January 24, 1990, by and between Melvin Simon and Associates, Inc., and Dillard Department Stores, Inc.

20. Fourth Amendment of Easement and Operating Agreement dated November 30, 1990, by and among Windsor Park Development Company Limited Partnership, J.C. Penney Properties, Inc., Montgomery Ward Development Corporation, Construction Developers, Incorporated, Dillard Department Stores, Inc., and Joske's San Antonio Real Estate Company recorded in the Records as File No. 2040877.

21. Letter dated December 10, 1992, from J.C. Penney Company, Inc.

22. Letter dated December 20, 1993, from Windsor Park Development Company Limited Partnership and Simon Property Group (Texas), L.P.

O.A.

23. Assignment and Assumption of Operating Agreement dated February 2, 1996, by and between Joske's San Antonio Real Estate Company and Dillard Texas Operating Limited Partnership and recorded in the Records at Volume b657 at Page 1460.

24. Assignment and Assumption of Operating Agreement dated February 2, 1996, by and between Construction Developers, Incorporated, and Dillard Texas Operating Limited Partnership and recorded in the Records at Volume b657 at Page 1450.

25. Assignment and Assumption of Operating Agreement dated February 2, 1996, by and between Dillard Department Stores, Inc., and Dillard Texas Operating Limited Partnership and recorded in the Records at Volume b657 at Page 1455.

26. Letter dated April 16, 2002, from Simon Property Group (Texas), L.P., and Windsor Park Mall, L.L.C.

EXHIBIT "A"

LAND DESCRIPTION

Tract I:

Lot 25, New City Black 12190, SIMON SUBDIVISION in the City of San Antonio, Bexar County, Texas, according to plat thereof recorded in Volume 9522, Pages 105-106 of the Deed and Plat Records of Bexar County, Texas.

TRACT II:

A non-exclusive right, privilege and easement to use the Common Facilities portions of the Windsor Park Mall Shopping Center for the respective purposes for which the Common Facilities are designed, as identified and granted by that certain Easement And Operating Agreement dated September 10, 1974, recorded in Volume 7451, Page 649 of the Deed Records of Bexar County, Texas, as amended by that certain Modification Of Easement And Operating Agreement dated May 5, 1975, recorded in Volume 7693, Page 199 of the Deed Records, as amended by that certain Second Amendment Of Easement And Operating Agreement dated April 15, 1977, recorded in Volume 8069, Page 704 of the Deed Records, as amended by that certain Third Amendment Of Easement And Operating Agreement dated July 16, 1985, recorded in Volume 4820, Page 1829 of the Real Property Records, and as amended by that certain Fourth Amendment Of Easement And Operating Agreement dated November 20, 1990, recorded in Volume 5004, Page 585 of the Real Property Records at Bexar County, Texas.

TRACT III:

A non-exclusive, right, privilege and easement for ingress and egress for the passage of motor vehicles and pedestrians upon, across and over certain parcels or tracts of land as identified and granted in that certain Cross Easement Agreement dated July 16, 1965, recorded in Volume 4820, Page 1885 of the Real Property Records of Bexar County, Texas.

Doc# 20070011278
Pages 10
01/16/2007 12:41:57 PM
e-Filed & e-Recorded in the
Official Public Records of
BEXAR COUNTY
GERRY RICKHOFF COUNTY CLERK

Fees 48.00

STATE OF TEXAS
COUNTY OF BEXAR
This is to Certify that this document
was e-FILED and e-RECORDED in the Official
Public Records of Bexar County, Texas
on this date and time stamped thereon.
01/16/2007 12:41:57 PM
COUNTY CLERK, BEXAR COUNTY TEXAS

Book 12639 Page 1583 12pgs Doc# 20070011464

RETURN TO:
ALAMO TITLE COMPANY
10010 SAN PEDRO #100
SAN ANTONIO, TEXAS 78216
GF# 0675014111 BICOY

ATC-ADMIN/BICOY

ASSIGNMENT AND ASSUMPTION OF OPERATING AGREEMENTS

THIS ASSIGNMENT AND ASSUMPTION OF OPERATING AGREEMENTS (this "Agreement") is entered into as of the 18th day of December, 2006 (the "Effective Date"), by and between **RENAISSANCE MALL, LLC**, a Texas limited liability company ("Assignor"), and **WINDSOR DEAN, LLC**, a Delaware limited liability company, **WINDSOR ALLAN, LLC**, a Delaware limited liability company, **WINDSOR ELY, LLC**, a Delaware limited liability company, **WINDSOR DAVID, LLC**, a Delaware limited liability company, and **SILVER OAK CENTURY, LLC**, a Delaware limited liability company (collectively, "Assignee").

WITNESSETH:

WHEREAS, Assignor desires to assign its interest in certain "Operating Agreements" (meaning all of the agreements and instruments described in Schedule 1 attached hereto), upon the terms and conditions set forth herein; and

WHEREAS, the Operating Agreements pertain to certain real property more particularly described on Exhibit A attached hereto (the "Property"), and certain other property.

NOW, THEREFORE, in consideration of the promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Assignor hereby transfers and assigns to Assignee, its successors and assigns, all its rights, title and interest, if any, in, to and under the Operating Agreements upon the terms and conditions set forth herein.

2. Assignee hereby accepts the foregoing assignment from Assignor and hereby assumes all of Assignor's future liabilities from this date forward and agrees to perform and discharge all future obligations from this date forward of Assignor under the Operating Agreements.

3. Assignee, from this date forward, hereby agrees to indemnify and hold harmless Assignor and Assignor's successors and assigns, and their parents, subsidiaries, affiliates and their officers, directors, shareholders, members, partners, employees, and agents from and against any mechanics' lien or claim therefor, any claim, cause of action, lawsuit, damage, liability, loss, cost or expense including, without limitation, reasonable attorneys' fees (collectively, "Claims") arising out of or in any way relating to the Operating Agreements; provided, however, that the within indemnity and hold harmless, shall not apply to the extent that such Claims relate to any time period prior to the Effective Date.

4. This Agreement may not be amended, modified or terminated except by an instrument, in writing, executed by the parties hereto.

5. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

5. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

6. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. The parties do not intend to confer any benefit hereunder on any person, firm or corporation other than the parties hereto and their respective successors and assigns.

7. This Agreement may be executed in two or more counterparts and all counterparts so executed shall for all purposes constitute one agreement, binding on all the parties hereto, notwithstanding that all parties shall not have executed the same counterpart.

8. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Property is located, without giving effect to any conflicts of law rule or principle that might require the application of another jurisdiction.

IN WITNESS V/HEREOF, the parties hereto have executed this Agreement as of the date first above written.

ASSIGNOR:

RENAISSANCE MALL, LLC, a Texas limited liability company

By: Misuma Investments, LLC, a California limited liability company, its sole managing member

By: _____
Allan Davidov, Managing Member

ASSIGNEE:

WINDSOR DEAN, LLC, a Delaware limited liability company

By: _____
Dean Davidov, Member

ASSIGNEE (continued):

WINDSOR ALLAN, LLC, a Delaware limited liability company

By: _____
Allan Davidov, Member

WINDSOR ELY, LLC, a Delaware limited liability company

By: _____
Ely Malkin, Member

WINDSOR DAVID, LLC, a Delaware limited liability company

By: _____
David Navon, Member

SILVER OAK CENTURY, LLC, a Delaware limited liability company

By: _____
Oved Anter, Sole Member

STATE OF California §
§
COUNTY OF Los Angeles

The foregoing Assignment and Assumption of Operating Agreements was acknowledged before me this 4th day of January, 2007, by Allan Davidov, the Managing Member of Misuma Investments, LLC, a California limited liability company, the sole managing member of **RENAISSANCE MALL, LLC,** a Texas limited liability company, on its behalf.

JONI M. SAND
Commission # 1610578
Notary Public - California
Los Angeles County
My Comm. Expires Oct 29, 2009

_____
Notary Public, State of California

ASSIGNEE (continued):

WINDSOR ALLAN, LLC, a Delaware limited liability company

By: _____
Allan Davidov, Member

WINDSOR ELY, LLC, a Delaware limited liability company

By: _____
Ely Malkin, Member

WINDSOR DAVID, LLC, a Delaware limited liability company

By: _____
David Navon, Member

SILVER OAK CENTURY, LLC, a Delaware limited liability company

By: _____
Oved Anter, Sole Member

STATE OF _____ §
§
COUNTY OF _____ §

The foregoing Assignment and Assumption of Operating Agreements was acknowledged before me this _____ day of January, 2007, by Allan Davidov, the Managing Member of Misuma Investments, LLC, a California limited liability company, the sole managing member of **RENAISSANCE MALL, LLC**, a Texas limited liability company, on its behalf.

_____
Notary Public, State of _____

STATE OF California §
§
COUNTY OF Los Angeles

The foregoing Assignment and Assumption of Operating Agreements was acknowledged before me this 9th day of January, 2007, by Dean Davidov, Member of **WINDSOR DEAN, LLC**, a Delaware limited liability company, on its behalf.

JONI M. SAND
Commission # 1610578
Notary Public - California
Los Angeles County
My Comm. Expires Oct 29, 2009

Joni M. Sand
Notary Public, State of California

STATE OF California §
§
COUNTY OF Los Angeles

The foregoing Assignment and Assumption of Operating Agreements was acknowledged before me this 9th day of January, 2007, by Allan Davidov, Member of **WINDSOR ALLAN, LLC**, a Delaware limited liability company, on its behalf.

JONI M. SAND
Commission # 1610578
Notary Public - California
Los Angeles County
My Comm. Expires Oct 29, 2009

Joni M. Sand
Notary Public, State of California

STATE OF California §
§
COUNTY OF Los Angeles

The foregoing Assignment and Assumption of Operating Agreements was acknowledged before me this 9th day of January, 2007, by Ely Malkin, Member of **WINDSOR ELY, LLC**, a Delaware limited liability company, on its behalf.

JONI M. SAND
Commission # 1610578
Notary Public - California
Los Angeles County
My Comm. Expires Oct 29, 2009

Joni M. Sand
Notary Public, State of California

STATE OF ILLINOIS §
§
COUNTY OF Cook §

The foregoing Assignment and Assumption of Operating Agreements was acknowledged before me this 9th day of January, 2007, by David Navon, Member of **WINDSOR DAVID, LLC**, a Delaware limited liability company, on its behalf.

OFFICIAL SEAL
MITCHELL D KREITER
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:09/05/08

Notary Public, State of Illinois

STATE OF _____ §
§
COUNTY OF _____ §

The foregoing Assignment and Assumption of Operating Agreements was acknowledged before me this _____ day of January, 2007, by Oved Anter, Sole Member of **SILVER OAK CENTURY, LLC**, a Delaware limited liability company, on its behalf.

Notary Public, State of _____

STATE OF _____ §
§
COUNTY OF _____ §

The foregoing Assignment and Assumption of Operating Agreements was acknowledged before me this _____ day of January, 2007, by David Navon, Member of **WINDSOR DAVID, LLC**, a Delaware limited liability company, on its behalf.

_____
Notary Public, State of _____

STATE OF California §
§
COUNTY OF Los Angeles

The foregoing Assignment and Assumption of Operating Agreements was acknowledged before me this 9th day of January, 2007, by Oved Anter, Sole Member of **SILVER OAK CENTURY, LLC**, a Delaware limited liability company, on its behalf.

JONI M. SAND
Commission # 1610578
Notary Public - California
Los Angeles County
My Comm. Expires Oct 29, 2009

Joni M. Sand
Notary Public, State of California

SCHEDULE 1

OPERATING AGREEMENTS

1. Easement and Operating Agreement dated September 10, 1974, by and among Windsor Park Development Company, J.C. Penney Properties, Inc., Montgomery Ward Development Corporation, Construction Developers, Incorporated, Dillard Department Stores, Inc., Alstores Realty Corporation and Allied Stores of Texas, Inc., as recorded in the official records of Bexar County, Texas (the "Records") in Volume 7451 at Page 649.

2. Supplemental Agreement dated September 10, 1974, by and among Windsor Park Development Company, Construction Developers, Incorporated, and Dillard Department Stores, Inc.

3. Supplemental Agreement dated September 10, 1974, by and among Windsor Park Development Company, Allied Stores of Texas, Inc., and Alstores Realty Corporation.

4. Letter dated September 10, 1974, from Windsor Park Development Company to Allied Stores of Texas, Inc., and Alstores Realty Corporation.

5. Letter Agreement dated September 10, 1974, by and among Windsor Park Development Company, Allied Stores of Texas, Inc., and Alstores Realty Corporation.

6. Letter Agreement dated September 10, 1974, by and among Windsor Park Development Company, Melvin Simon & Associates, Inc., J.C. Penney Properties, Inc., Montgomery Ward Development Corporation, Dillard Department Stores, Inc., Construction Developers, Incorporated, Allied Stores of Texas, Inc., and Alstores Realty Corporation.

7. Letter Agreement dated September 10, 1974, by and among Montgomery Ward & Co., Incorporated, Windsor Park Development Company, Dillard Department Stores, Inc., J.C. Penney Properties, Inc., and Allied Stores of Texas, Inc.

8. Modification of Easement and Operating Agreement dated May 5, 1975, by and among Windsor Park Development Company, J.C. Penney Properties, Inc., Montgomery Ward Development Corporation, Construction Developers, Incorporated, Dillard Department Stores, Inc., Alstores Realty Corporation, and Allied Stores of Texas, Inc.

9. Letter Agreement dated February 17, 1976, by and among J.C. Penney Properties, Inc., Windsor Park Development Company, Montgomery Ward Development Corporation, Construction Developers, Incorporated, Dillard Department Stores, Inc., Alstores Realty Corporation, and Allied Stores of Texas.

10. Second Amendment of Easement and Operating Agreement dated April 15, 1977, by and among Windsor Park Development Company, J.C. Penney Properties, Inc., Montgomery Ward Development Corporation, Construction Developers, Incorporated, Dillard

Department Stores, Inc., Alstores Realty Corporation, and Allied Stores of Texas, Inc. and recorded in the Records as File No. 764748 and in Volume 8069 at Page 704.

11. Indemnity dated March 14, 1984, by Mervyn's, a California corporation.

12. Letter Agreement dated August 8, 1984, by and among Alstores Realty Corporation, Melvin Simon & Associates, Inc., and Windsor Park Development Company.

13. Letter Agreement dated August 28, 1984, by and among Construction Developers, Incorporated, Melvin Simon & Associates, Inc., and Windsor Park Development Company.

14. Cross Easement Agreement dated July 16, 1985, by and among North East Independent School District, Windsor Park Development Company and Construction Developers, Incorporated and recorded in the Records as File No. 1920339.

15. Third Amendment of Easement and Operating Agreement dated July 16, 1985, by and among Windsor Park Development Company, J.C. Penney Properties, Inc., Montgomery Ward Development Corporation, Construction Developers, Incorporated, Dillard Department Stores, Inc., Alstores Realty Corporation and Alstores-East, Inc., and recorded in the Records in Volume 4820 at Page 1829.

16. Letter dated March 29, 1988, from J.C. Penney Company, Inc., and J.C. Penney Properties, Inc.

17. First Amendment to First Supplemental Agreement dated October 14, 1988, by and between Windsor Park Development Company and Joske San Antonio Real Estate Company.

18. Letter dated January 17, 1989, from J. C. Penney Company, Inc., and J.C. Penney Properties, Inc.

19. Letter Agreement dated January 24, 1990, by and between Melvin Simon and Associates, Inc., and Dillard Department Stores, Inc.

20. Fourth Amendment of Easement and Operating Agreement dated November 30, 1990, by and among Windsor Park Development Company Limited Partnership, J.C. Penney Properties, Inc., Montgomery Ward Development Corporation, Construction Developers, Incorporated, Dillard Department Stores, Inc., and Joske's San Antonio Real Estate Company recorded in the Records as File No. 2040877.

21. Letter dated December 10, 1992, from J.C. Penney Company, Inc.

22. Letter dated December 20, 1993, from Windsor Park Development Company Limited Partnership and Simon Property Group (Texas), L.P.

23. Assignment and Assumption of Operating Agreement dated February 2, 1996, by and between Joske's San Antonio Real Estate Company and Dillard Texas Operating Limited Partnership and recorded in the Records at Volume b657 at Page 1460.

24. Assignment and Assumption of Operating Agreement dated February 2, 1996, by and between Construction Developers, Incorporated, and Dillard Texas Operating Limited Partnership and recorded in the Records at Volume b657 at Page 1450.

25. Assignment and Assumption of Operating Agreement dated February 2, 1996, by and between Dillard Department Stores, Inc., and Dillard Texas Operating Limited Partnership and recorded in the Records at Volume b657 at Page 1455.

26. Letter dated April 16, 2002, from Simon Property Group (Texas), L.P., and Windsor Park Mall, L.L.C.

EXHIBIT "A"

LAND DESCRIPTION

Tract I:

Lots 37 and 38, New City Black 12190, SIMON SUBDIVISION in the City of San Antonio, Bexar County, Texas, according to plat thereof recorded in Volume 9522, Pages 107-108 of the Deed and Plat Records of Bexar County, Texas.

TRACT II

A non-exclusive right, privilege and easement to use the Common Facilities portions of the Windsor Park Mall Shopping Center for the respective purposes for which the Common Facilities are designed, as identified and granted by that certain Easement And Operating Agreement dated September 10, 1974, recorded in Volume 7451, Page 649 of the Deed Records of Bexar County, Texas, as amended by that certain Modification Of Easement And Operating Agreement dated May 5, 1975, recorded in Volume 7693, Page 199 of the Deed Records, as amended by that certain Second Amendment Of Easement And Operating Agreement dated April 15, 1977, recorded in Volume 8069, Page 704 of the Deed Records, as amended by that certain Third Amendment Of Easement And Operating Agreement dated July 16, 1985, recorded in Volume 4820, Page 1829 of the Real Property Records, and as amended by that certain Fourth Amendment Of Easement And Operating Agreement dated November 20, 1990, recorded in Volume 5004, Page 585 of the Real Property Records at Bexar County, Texas; said Easement and Operating Agreement having been assigned and assumed by instrument dated March 11, 2005, by instrument recorded in Volume 11286, Page 1402, Real Property Records of Bexar County, Texas.

TRACT III

A non-exclusive, right, privilege and easement for ingress and egress for the passage of motor vehicles and pedestrians upon, across and over certain parcels or tracts of land as identified and granted in that certain Cross Easement Agreement dated July 16, 1965, recorded in Volume 4820, Page 1885 of the Real Property Records of Bexar County, Texas.

O.A. 6/2

Doc# 20070011464
Pages 12
01/16/2007 14:08:38 PM
e-Filed & e-Recorded in the
Official Public Records of
BEXAR COUNTY
GERRY RICKHOFF COUNTY CLERK

Fees 56.00

STATE OF TEXAS
COUNTY OF BEXAR
This is to Certify that this document
was e-FILED and e-RECORDED in the Official
Public Records of Bexar County, Texas
on this date and time stamped thereon.
01/16/2007 14:08:38 PM
COUNTY CLERK, BEXAR COUNTY TEXAS

RETURN TO:
ALAMO TITLE COMPANY
10010 SAN PEDRO #100
SAN ANTONIO, TEXAS 78216
GF# 0675014111 BICOY

Book 12639 Page 1595 14pgs Doc# 20070011465

ASSIGNMENT AND ASSUMPTION OF OPERATING AGREEMENTS

THIS ASSIGNMENT AND ASSUMPTION OF OPERATING AGREEMENTS (this "Agreement") is entered into as of the 9th day of January, 2007 (this "Agreement"), by and between **WINDSOR DEAN, LLC**, a Delaware limited liability company, **WINDSOR ALLAN, LLC**, a Delaware limited liability company, **WINDSOR ELY, LLC**, a Delaware limited liability company, **WINDSOR DAVID, LLC**, a Delaware limited liability company, and **SILVER OAK CENTURY, LLC**, a Delaware limited liability company (collectively, "Assignor") and **CITY OF WINDCREST ECONOMIC DEVELOPMENT CORPORATION** ("Assignee").

WITNESSETH:

WHEREAS, in accordance with, and pursuant to, that certain Property Sale Agreement dated December 29, 2006 (the "PSA"), between Assignor and Assignee, Assignor desires to transfer its interest in certain "Operating Agreements" (meaning all of the agreements and instruments described in Schedule 1 attached hereto), upon the terms and conditions set forth herein; and

WHEREAS, the Operating Agreements pertain to certain real property more particularly described on Exhibit A attached hereto (the "Property"), and certain other property.

NOW, THEREFORE, in consideration of the promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Assignor hereby transfers and assigns to Assignee, its successors and assigns, all its rights, title and interest, if any, in, to and under the Operating Agreements upon the terms and conditions set forth herein.

2. Assignee hereby accepts the foregoing assignment from Assignor and hereby assumes all of Assignor's future liabilities from this date forward and agrees to perform and discharge all future obligations from this date forward of Assignor under the Operating Agreements.

3. Assignee, from this date forward, hereby agrees to indemnify and hold harmless Assignor and Assignor's successors and assigns, and their parents, subsidiaries, affiliates and their officers, directors, shareholders, members, partners, employees, and agents from and against any mechanics' lien or claim therefor, any claim, cause of action, lawsuit, damage, liability, loss, cost or expense including, without limitation, reasonable attorneys' fees (collectively, "Claims") arising out of or in any way relating to the Operating Agreements; provided, however, that the within indemnity and hold harmless, shall not apply to the extent that such Claims relate to any time period prior to the Closing as such term is defined in the PSA.

4. This Agreement may not be amended, modified or terminated except by an instrument, in writing, executed by the parties hereto.

ATC-ADMIN/BICOY

5. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

6. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. The parties do not intend to confer any benefit hereunder on any person, firm or corporation other than the parties hereto and their respective successors and assigns.

7. This Agreement may be executed in two or more counterparts and all counterparts so executed shall for all purposes constitute one agreement, binding on all the parties hereto, notwithstanding that all parties shall not have executed the same counterpart.

8. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Property is located, without giving effect to any conflicts of law rule or principle that might require the application of another jurisdiction.

IN WITNESS V/HEREOF, the parties hereto have executed this Agreement as of the date first above written.

ASSIGNOR:

WINDSOR DEAN, LLC, a Delaware limited liability company

By: _____
Dean Davidov, Member

WINDSOR ALLAN, LLC, a Delaware limited liability company

By: _____
Allan Davidov, Member

WINDSOR ELY, LLC, a Delaware limited liability company

By: _____
Ely Malkin, Member

WINDSOR DAVID, LLC, a Delaware limited liability company

By: _____
David Navon, Member

SILVER OAK CENTURY, LLC, a Delaware limited liability company

By: _____
Oved Anter, Sole Member

ASSIGNEE:

CITY OF WINDCREST ECONOMIC DEVELOPMENT CORPORATION

By: _____
F.R. Cain, City Administrator
City of Windcrest
8601 Midcrown Drive
Windcrest, Texas 78239
210-655-0022 ext. 212

WINDSOR DAVID, LLC, a Delaware limited liability company

By: _____
David Navon, Member

SILVER OAK CENTURY, LLC, a Delaware limited liability company

By: _____
Oved Anter, Sole Member

ASSIGNEE:

CITY OF WINDCREST ECONOMIC DEVELOPMENT CORPORATION

By: _____
F.R. Cain, City Administrator
City of Windcrest
8601 Midcrown Drive
Windcrest, Texas 78239
210-655-0022 ext. 212

WINDSOR DAVID, LLC, a Delaware limited liability company

By: _____
David Navon, Member

SILVER OAK CENTURY, LLC, a Delaware limited liability company

By: _____
Oved Anter, Sole Member

ASSIGNEE:

CITY OF WINDCREST ECONOMIC DEVELOPMENT CORPORATION

By: _____
F.R. Cain, City Administrator
City of Windcrest
8601 Midcrown Drive
Windcrest, Texas 78239
210-655-0022 ext. 212

STATE OF California §
§
COUNTY OF Los Angeles §

The foregoing Assignment and Assumption of Operating Agreements was acknowledged before me this 9th day of January, 2007, by Dean Davidov, Member of **WINDSOR DEAN, LLC**, a Delaware limited liability company, on its behalf.

JONI M. SAND
Commission # 1610578
Notary Public - California
Los Angeles County
My Comm. Expires Oct 29, 2009

Joni M. Sand
Notary Public, State of California

STATE OF California §
§
COUNTY OF Los Angeles §

The foregoing Assignment and Assumption of Operating Agreements was acknowledged before me this 9th day of January, 2007, by Allan Davidov, Member of **WINDSOR ALLAN, LLC**, a Delaware limited liability company, on its behalf.

JONI M. SAND
Commission # 1610578
Notary Public - California
Los Angeles County
My Comm. Expires Oct 29, 2009

Joni M. Sand
Notary Public, State of California

STATE OF California §
§
COUNTY OF Los Angeles §

The foregoing Assignment and Assumption of Operating Agreements was acknowledged before me this 9th day of January, 2007, by Ely Malkin, Member of **WINDSOR ELY, LLC**, a Delaware limited liability company, on its behalf.

JONI M. SAND
Commission # 1610578
Notary Public - California
Los Angeles County
My Comm. Expires Oct 29, 2009

Joni M. Sand
Notary Public, State of California

STATE OF ILLINOIS §
§
COUNTY OF COOK §

The foregoing Assignment and Assumption of Operating Agreements was acknowledged before me this 9th day of January, 2007, by David Navon, Member of **WINDSOR DAVID, LLC**, a Delaware limited liability company, on its behalf.

OFFICIAL SEAL
MITCHELL D KREITER
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:09/05/08

Notary Public, State of ILLINOIS

STATE OF _____ §
§
COUNTY OF _____ §

The foregoing Assignment and Assumption of Operating Agreements was acknowledged before me this _____ day of January, 2007, by Oved Anter, Sole Member of **SILVER OAK CENTURY, LLC**, a Delaware limited liability company, on its behalf.

Notary Public, State of _____

STATE OF TEXAS §
§
COUNTY OF _____ §

The foregoing Assignment and Assumption of Operating Agreements was acknowledged before me this _____ day of January, 2007, by F.R. Cain, City Administrator of **CITY OF WINDCREST ECONOMIC DEVELOPMENT CORPORATION**, on its behalf.

Notary Public, State of Texas

STATE OF ILLINOIS §
§
COUNTY OF COOK §

The foregoing Assignment and Assumption of Operating Agreements was acknowledged before me this 9th day of January, 2007, by David Navon, Member of **WINDSOR DAVID, LLC**, a Delaware limited liability company, on its behalf.

OFFICIAL SEAL
MITCHELL D KREITER
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:09/05/08

Notary Public, State of ILLINOIS

STATE OF _____ §
§
COUNTY OF _____ §

The foregoing Assignment and Assumption of Operating Agreements was acknowledged before me this _____ day of January, 2007, by Oved Anter, Sole Member of **SILVER OAK CENTURY, LLC**, a Delaware limited liability company, on its behalf.

Notary Public, State of _____

STATE OF TEXAS §
§
COUNTY OF BEXAR §

The foregoing Assignment and Assumption of Operating Agreements was acknowledged before me this 12th day of January, 2007, by F.R. Cain, City Administrator of **CITY OF WINDCREST ECONOMIC DEVELOPMENT CORPORATION**, on its behalf.

HEATHER MICHELLE WEIDENBACH
NOTARY PUBLIC
State of Texas
Comm. Exp. 01-09-2010

Notary Public, State of Texas

STATE OF _____ §
§
COUNTY OF _____ §

The foregoing Assignment and Assumption of Operating Agreements was acknowledged before me this _____ day of January, 2007, by David Navon, Member of **WINDSOR DAVID, LLC**, a Delaware limited liability company, on its behalf.

_____
Notary Public, State of _____

STATE OF California §
§
COUNTY OF Los Angeles

The foregoing Assignment and Assumption of Operating Agreements was acknowledged before me this 9th day of January, 2007, by Oved Anter, Sole Member of **SILVER OAK CENTURY, LLC**, a Delaware limited liability company, on its behalf.

JONI M SAND
Commission # 1610578
Notary Public - California
Los Angeles County
My Comm. Expires Oct 29, 2009

Joni M. Sand
Notary Public, State of California

STATE OF TEXAS §
§
COUNTY OF _____ §

The foregoing Assignment and Assumption of Operating Agreements was acknowledged before me this _____ day of January, 2007, by F.R. Cain, City Administrator of **CITY OF WINDCREST ECONOMIC DEVELOPMENT CORPORATION**, on its behalf.

_____
Notary Public, State of Texas

SCHEDULE 1

OPERATING AGREEMENTS

1. Easement and Operating Agreement dated September 10, 1974, by and among Windsor Park Development Company, J.C. Penney Properties, Inc., Montgomery Ward Development Corporation, Construction Developers, Incorporated, Dillard Department Stores, Inc., Alstores Realty Corporation and Allied Stores of Texas, Inc., as recorded in the official records of Bexar County, Texas (the "Records") in Volume 7451 at Page 649.

2. Supplemental Agreement dated September 10, 1974, by and among Windsor Park Development Company, Construction Developers, Incorporated, and Dillard Department Stores, Inc.

3. Supplemental Agreement dated September 10, 1974, by and among Windsor Park Development Company, Allied Stores of Texas, Inc., and Alstores Realty Corporation.

4. Letter dated September 10, 1974, from Windsor Park Development Company to Allied Stores of Texas, Inc., and Alstores Realty Corporation.

5. Letter Agreement dated September 10, 1974, by and among Windsor Park Development Company, Allied Stores of Texas, Inc., and Alstores Realty Corporation.

6. Letter Agreement dated September 10, 1974, by and among Windsor Park Development Company, Melvin Simon & Associates, Inc., J.C. Penney Properties, Inc., Montgomery Ward Development Corporation, Dillard Department Stores, Inc., Construction Developers, Incorporated, Allied Stores of Texas, Inc., and Alstores Realty Corporation.

7. Letter Agreement dated September 10, 1974, by and among Montgomery Ward & Co., Incorporated, Windsor Park Development Company, Dillard Department Stores, Inc., J.C. Penney Properties, Inc., and Allied Stores of Texas, Inc.

8. Modification of Easement and Operating Agreement dated May 5, 1975, by and among Windsor Park Development Company, J.C. Penney Properties, Inc., Montgomery Ward Development Corporation, Construction Developers, Incorporated, Dillard Department Stores, Inc., Alstores Realty Corporation, and Allied Stores of Texas, Inc.

9. Letter Agreement dated February 17, 1976, by and among J.C. Penney Properties, Inc., Windsor Park Development Company, Montgomery Ward Development Corporation, Construction Developers, Incorporated, Dillard Department Stores, Inc., Alstores Realty Corporation, and Allied Stores of Texas.

10. Second Amendment of Easement and Operating Agreement dated April 15, 1977, by and among Windsor Park Development Company, J.C. Penney Properties, Inc., Montgomery Ward Development Corporation, Construction Developers, Incorporated, Dillard

Department Stores, Inc., Alstores Realty Corporation, and Allied Stores of Texas, Inc. and recorded in the Records as File No. 764748 and in Volume 8069 at Page 704.

11. Indemnity dated March 14, 1984, by Mervyn's, a California corporation.

12. Letter Agreement dated August 8, 1984, by and among Alstores Realty Corporation, Melvin Simon & Associates, Inc., and Windsor Park Development Company.

13. Letter Agreement dated August 28, 1984, by and among Construction Developers, Incorporated, Melvin Simon & Associates, Inc., and Windsor Park Development Company.

14. Cross Easement Agreement dated July 16, 1985, by and among North East Independent School District, Windsor Park Development Company and Construction Developers, Incorporated and recorded in the Records as File No. 1920339.

15. Third Amendment of Easement and Operating Agreement dated July 16, 1985, by and among Windsor Park Development Company, J.C. Penney Properties, Inc., Montgomery Ward Development Corporation, Construction Developers, Incorporated, Dillard Department Stores, Inc., Alstores Realty Corporation and Alstores-East, Inc., and recorded in the Records in Volume 4820 at Page 1829.

16. Letter dated March 29, 1988, from J.C. Penney Company, Inc., and J.C. Penney Properties, Inc.

17. First Amendment to First Supplemental Agreement dated October 14, 1988, by and between Windsor Park Development Company and Joske San Antonio Real Estate Company.

18. Letter dated January 17, 1989, from J. C. Penney Company, Inc., and J.C. Penney Properties, Inc.

19. Letter Agreement dated January 24, 1990, by and between Melvin Simon and Associates, Inc., and Dillard Department Stores, Inc.

20. Fourth Amendment of Easement and Operating Agreement dated November 30, 1990, by and among Windsor Park Development Company Limited Partnership, J.C. Penney Properties, Inc., Montgomery Ward Development Corporation, Construction Developers, Incorporated, Dillard Department Stores, Inc., and Joske's San Antonio Real Estate Company recorded in the Records as File No. 2040877.

21. Letter dated December 10, 1992, from J.C. Penney Company, Inc.

22. Letter dated December 20, 1993, from Windsor Park Development Company Limited Partnership and Simon Property Group (Texas), L.P.

D.A.

23. Assignment and Assumption of Operating Agreement dated February 2, 1996, by and between Joske's San Antonio Real Estate Company and Dillard Texas Operating Limited Partnership and recorded in the Records at Volume b657 at Page 1460.

24. Assignment and Assumption of Operating Agreement dated February 2, 1996, by and between Construction Developers, Incorporated, and Dillard Texas Operating Limited Partnership and recorded in the Records at Volume b657 at Page 1450.

25. Assignment and Assumption of Operating Agreement dated February 2, 1996, by and between Dillard Department Stores, Inc., and Dillard Texas Operating Limited Partnership and recorded in the Records at Volume b657 at Page 1455.

26. Letter dated April 16, 2002, from Simon Property Group (Texas), L.P., and Windsor Park Mall, L.L.C.

EXHIBIT "A"

LAND DESCRIPTION

Tract I:

Lots 37 and 38, New City Black 12190, SIMON SUBDIVISION in the City of San Antonio, Bexar County, Texas, according to plat thereof recorded in Volume 9522, Pages 107-108 of the Deed and Plat Records of Bexar County, Texas.

TRACT II

A non-exclusive right, privilege and easement to use the Common Facilities portions of the Windsor Park Mall Shopping Center for the respective purposes for which the Common Facilities are designed, as identified and granted by that certain Easement And Operating Agreement dated September 10, 1974, recorded in Volume 7451, Page 649 of the Deed Records of Bexar County, Texas, as amended by that certain Modification Of Easement And Operating Agreement dated May 5, 1975, recorded in Volume 7693, Page 199 of the Deed Records, as amended by that certain Second Amendment Of Easement And Operating Agreement dated April 15, 1977, recorded in Volume 8069, Page 704 of the Deed Records, as amended by that certain Third Amendment Of Easement And Operating Agreement dated July 16, 1985, recorded in Volume 4820, Page 1829 of the Real Property Records, and as amended by that certain Fourth Amendment Of Easement And Operating Agreement dated November 20, 1990, recorded in Volume 5004, Page 585 of the Real Property Records at Bexar County, Texas; said Easement and Operating Agreement having been assigned and assumed by instrument dated March 11, 2005, by instrument recorded in Volume 11286, Page 1402, Real Property Records of Bexar County, Texas.

TRACT III

A non-exclusive, right, privilege and easement for ingress and egress for the passage of motor vehicles and pedestrians upon, across and over certain parcels or tracts of land as identified and granted in that certain Cross Easement Agreement dated July 16, 1965, recorded in Volume 4820, Page 1885 of the Real Property Records of Bexar County, Texas.

Doc# 20070011465
Pages 14
01/16/2007 14:08:38 PM
e-Filed & e-Recorded in the
Official Public Records of
BEXAR COUNTY
GERRY RICKHOFF COUNTY CLERK

Fees 64.00

STATE OF TEXAS
COUNTY OF BEXAR
This is to Certify that this document
was e-FILED and e-RECORDED in the Official
Public Records of Bexar County, Texas
on this date and time stamped thereon.
01/16/2007 14:08:38 PM
COUNTY CLERK, BEXAR COUNTY TEXAS

LT1-77-20070034080-1

SCANNED

PARTIAL MUTUAL RELEASE AND MODIFICATION OF EASEMENT AND OPERATING AGREEMENT

This Partial Mutual Release and Modification of Easement and Operating Agreement (referred to herein as the "Partial Mutual Release and Modification") is entered into on the 25th day of January 2007, by and between City of Windcrest Economic Development Corporation ("City of Windcrest"), its successors or assigns, and Anthon Minor, Ltd, a Texas Limited Partnership, its successors or assigns.

City of Windcrest, as Purchaser, has entered into an Agreement of Sale and Purchase with Anthon Major, Ltd, as Seller, to purchase that certain parcel of land in Bexar County, Texas, known as the Wards tract and more particularly described on Exhibit "A" attached hereto ("City of Windcrest Wards Property").

Anthon Minor, Ltd, a Texas Limited Partnership, is the owner of that certain parcel of land in Bexar County, Texas, adjacent to the Wards tract and more particularly described on Exhibit "B" attached hereto (the "Anthon Minor Property").

City of Windcrest, as Purchaser has entered into, or intends to enter into, earnest money contracts to purchase the balance of the Department Store tracts and the Mall Tract, together known as the "Remaining Windsor Park Mall Property," except for the Anthon Minor Property.

City of Windcrest Wards Property, the Anthon Minor Property, and the Remaining Windsor Park Mall Property are encumbered by that one certain Easement and Operating Agreement, dated September 10, 1974, and recorded on October 1, 1974, in Volume 7451, Page 649, Real Property Records of Bexar County, Texas, among Windsor Park Development Company, J.C. Penney Properties, Inc., Montgomery Ward Development Corporation, Dillard Department Stores, Inc., Construction Developers, Incorporated, Alstores Realty Corporation, and Allied Stores of Texas, Inc., modified by agreement dated May 5, 1975, recorded in Volume 7693, Page 199, Real Property Records of Bexar County, Texas; further amended by Second Amendment of Easement and Operating Agreement, dated April 15, 1977, recorded April 28, 1977, in Volume 8069, Page 704, Deed Records, Bexar County, Texas, further amended by Third Amendment of Easement and Operating Agreement dated July 16, 1985, recorded on May 17, 1990, in Volume 4820, Page 1829, Official Public Records of Real Property of Bexar County, Texas, and further amended by Fourth Amendment of Easement and Operating Agreement dated November 20, 1990, recorded February 13, 1991, in Volume 5004, Page 585, Official Public Records of Real Property of Bexar County, Texas, and being assigned in Volume 9345, Page 1911 Official Public Records of Real Property of Bexar County, Texas (referred to herein as the "Operating Agreement").

Provisions of the Operating Agreement are obsolete, unenforceable and impractical due to lack of operation of the department stores and other stores within Windsor Park Mall. The purpose of this Partial Mutual Release and Modification is to clarify and minimize the impact of the Operating Agreement on City of Windcrest Wards

LT2-12689-1166-8

Property, the Remaining Windsor Park Mall Property (after it is acquired by the City of Windcrest), and the Anthon Minor Property.

The Anthon Minor Property consists of approximately 2.4 acres and (i) a free standing building and (ii) parking spaces surrounding the building and on the east side of Mall Loop Road which transverses the Anthon Minor Property, as depicted on Exhibit "C" attached hereto. The only Common Facilities, as described in the Operating Agreement, encumbering the Anthon Minor Property are (i) Mall Loop Road, (ii) underground utility easements, and (iii) shared parking spaces.

CITY OF WINDCREST AND ANTHON MINOR, LTD., HEREBY MUTUALLY RELEASE THEIR RESPECTIVE PROPERTIES, CITY OF WINDCREST WARDS PROPERTY AND THE ANTHON MINOR PROPERTY AS DESCRIBED ON EXHIBIT "A" AND EXHIBIT "B" ATTACHED HERETO AND ANY REAL PROPERTY ACQUIRED IN THE FUTURE BY CITY OF WINDCREST SUBJECT TO THE OPERATING AGREEMENT, FROM THE OPERATING AGREEMENT WITH THE EXCEPTION OF THE FOLLOWING: (I) THE MALL LOOP ROAD, (II) ANY SHARED UTILITY EASEMENTS, AND (III) THE PARKING SPACES ON THE EAST SIDE OF THE MALL LOOP ROAD. THE MALL LOOP ROAD AND THE SHARED PARKING SPACES ON THE EAST SIDE OF THE MALL LOOP ROAD ARE DEPICTED ON EXHIBIT "C" ATTACHED HERETO AND MADE A PART HEREOF FOR ALL PURPOSES.

City of Windcrest and Anthon Minor, Ltd., acknowledge that the shared parking on the east side of Mall Loop Road may, in the future, be divided by a fence, along the shared property line, causing Anthon Minor, Ltd., to use only the parking spaces on the Anthon Minor Property and City of Windcrest to use only the parking spaces on City of Windcrest Wards Property.

City of Windcrest and Anthon Minor, Ltd, will amend this Partial Mutual Release and Modification, if deemed necessary by Anthon Minor, Ltd, to add any of the Remaining Windsor Park Mall Property, when acquired by City of Windcrest or its successor or assign.

City of Windcrest Wards Property and the Anthon Minor Property shall continue to have all rights, benefits, and obligations under the Operating Agreement by and between any real property subject to the Operating Agreement (i) not specifically set forth on Exhibit "A" and Exhibit "B" attached hereto or (ii) acquired by City of Windcrest as part of the Remaining Windsor Park Mall Property.

This Partial Mutual Release and Modification is a binding obligation of City of Windcrest and Anthon Minor, Ltd., their successors and assigns, which shall be enforceable if, and only if, City of Windcrest, or its successor or assignee, closes the purchase of City of Windcrest Wards Property. This Partial Mutual Release and Modification shall be filed in the Real Property Records of Bexar County, Texas,

simultaneously with the filing of the deed from Anthon Major, Ltd., to City of Windcrest conveying the City of Windcrest Wards Property.

City of Windcrest
Economic Development Corporation
By: _____
Print Name: FORESTT R. CAIN
Title: CITY ADMINISTRATOR
Date: January 25, 2007

Anthon Minor, Ltd,
a Texas Limited Partnership

By: It's General Partner
Anthon Minor, G.P., LLC
A Texas Limited Liability Company

By: _____
Ted Alexander, Manager
Date: ~~January~~ FEBRUARY 12, 2007

STATE OF TEXAS §
§
COUNTY OF BEXAR §

TRACY MICHELLE FREIMARCK
NOTARY PUBLIC
State of Texas
Comm. Exp. 11-18-2009

This instrument was acknowledged before me on the 25 day of January, 2007, by Forestt R. Cain, City Administrator, of City of Windcrest Economic Development Corporation, in the capacity herein stated.

Tracy Michelle Freimarck
NOTARY PUBLIC, STATE OF TEXAS

STATE OF TEXAS §
§
COUNTY OF BEXAR §

This instrument was acknowledged before me on the 12th day of ~~January~~ February 2007, by Ted Alexander, Manager of Anthon Minor G.P., General Partner of Anthon Minor, Ltd., in the capacity herein stated.

Stella L. Delgado
NOTARY PUBLIC, STATE OF TEXAS

After Recording Return to:
Anthon Minor, Ltd.
614 C Business 35, #18
New Braunfels, Texas 78130

STELLA L. DELGADO
MY COMMISSION EXPIRES
July 21, 2010

EXHIBIT "A"

LEGAL DESCRIPTION

BEING 11.5384 ACRE (502,615 SQUARE FEET) OF LAND OUT OF LOT 24, NEW CITY BLOCK 12190, SIMON SUBDIVISION, IN THE CITY OF SAN ANTONIO, BEXAR COUNTY, TEXAS ACCORDING TO PLAT THEREOF RECORDED IN VOLUME 7800 PAGES 9 THROUGH 13, INCLUSIVE, DEED AND PLAT RECORDS OF BEXAR COUNTY, TEXAS. SAID 11.5384 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING AT A FOUND CAPPED ½ INCH IRON ROD FOUND FOR THE COMMON WESTERLY CORNER OF LOTS 24 AND 26 IN THE EASTERLY LINE OF INTERSTATE HIGHWAY 35 (LOOP 410) (300 FEET WIDE);

THENCE NORTH 10 DEGREES 11 MINUTES 06 SECONDS EAST, ALONG EASTERLY LINE OF INTERSTATE HIGHWAY 35 (LOOP 410) A DISTANCE OF 337.40 FEET TO A 5/8 INCH IRON ROD SET FOR THE SOUTHERLY NORTHWEST CORNER AND THE POINT OF BEGINNING;

THENCE NORTH 10 DEGREES 11 MINUTES 06 SECONDS EAST, CONTINUING ALONG SAID EASTERLY LINE OF INTERSTATE HIGHWAY 35 (LOOP 410) , A DISTANCE OF 54.60 FEET TO A 5/8 INCH IRON ROD SET FOR THE MOST NORTHWESTERLY CORNER OF THE HEREIN DESCRIBED TRACT AND SAID LOT 24;

THENCE NORTH 85 DEGREES 43 MINUTES 06 SECONDS EAST, ALONG THE NORTHERLY LINE OF SAID LOT 24 , A DISTANCE OF 381.42 FEET TO A 5/8 INCH IRON ROD SET FOR CORNER;

THENCE ALONG THE SOUTHERLY LINE OF SAID LOT 25 WITH THE FOLLOWING FOUR COURSES;

SOUTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, 141.68 FEET TO A PK NAIL SET FOR CORNER;
NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST, 180.09 FEET TO A PK NAIL SET FOR CORNER;
SOUTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, 140.00 FEET TO A PK NAIL SET FOR CORNER;
NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST, 172.00 FEET TO A PK NAIL SET FOR CORNER;

THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, ALONG THE SOUTHWESTERLY LINE OF LOTS 25 AND 26, A DISTANCE OF 793.00 FEET TO A PK NAIL FOUND FOR CORNER;

THENCE ALONG THE INTERIOR COMMON LINE OF SAID LOTS 24 AND 26 WITH THE FOLLOWING SEVEN COURSES;

SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST, 209.40 FEET TO A PK NAIL FOUND FOR CORNER;
NORTH 00 DEGREES 00 MINUTES 00 SECONDS WEST, 25.00 FEET TO A PK NAIL FOUND FOR CORNER;
SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST, 138.60 FEET TO A ½ INCH IRON ROD FOUND FOR CORNER;
NORTH 00 DEGREES 00 MINUTES 00 SECONDS WEST, 34.92 FEET TO A PK NAIL SET FRO CORNER;
NORTH 90 DEGREES 00 MINUTES 00 SECONDS WEST, 245.15 FEET TO A PK NAIL SET FOR CORNER;
NORTH 58 DEGREES 30 MINUTES 00 SECONDS WEST, 68.00 FEET TO A PK NAIL SET FOR CORNER;
NORTH 11 DEGREES 47 MINUTES 28 SECONDS EAST, 529.53 FEET TO A 5/8 INCH IRON ROD FOUND FOR CORNER;

THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST, ACROSS SAID LOT 24, A DISTANCE OF 103.15 FEET TO A P.K. NAIL SET FOR CORNER;

THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, ACROSS SAID LOT 24, A DISTANCE OF 327.26 FEET TO A P.K. NAIL SET FOR CORNER;

THENCE SOUTH 80 DEGREES 30 MINUTES 17 SECONDS WEST, A DISTANCE OF 311.52 FEET TO THE POINT OF BEGINNING AND CONTAINING 11.5384 ACRES (502,615 SQUARE FEET) OF LAND.

Exhibit "B"

BEING 2.6424 ACRES (115,104 SQUARE FEET) OF LAND OUT OF LOT 24, NEW CITY BLOCK 1290, SIMON SUBDIVISION, IN THE CITY SAN ANTONIO, BEXAR COUNTY, TEXAS, ACCORDING TO PLAT THEREOF RECORDED IN VOLUME 7800, PAGE 9 THROUGH 13, INCLUSIVE, DEED AND PLAT RECORDS OF BEXAR COUNTY, TEXAS. SAID 2.6424 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED IN METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A FOUND CAPPED ½ INCH IRON ROD FOUND FOR THE COMMON WESTERLY CORNER OF LOTS 24 AND 26 IN THE EASTERLY LINE OF INTERSTATE HIGHWAY 35 (LOOP 410) (300 FEET WIDE);

THENCE NORTH 10 DEGREES 11 MINUTES 06 SECONDS EAST, ALONG SAID EASTERLY LINE OF INTERSTATE HIGHWAY 35 (LOOP 410) A DISTANCE OF 337.40 FEET TO A 5/8 INCH IRON ROD SET FOR THE NORTHWESTERLY CORNER;

THENCE NORTH 80 DEGREES 30 MINUTES 17 SECONDS EAST, A DISTANCE OF 311.52 FEET TO A P.K. NAIL SET FOR CORNER;

THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS WEST, A DISTANCE OF 327.26 FEET TO A P.K. NAIL SET FOR THE SOUTHEAST CORNER ;

THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST, A DISTANCE OF 103.15 FEET TO A 5/8 INCH IRON ROD FOUND FOR AN ANGLE POINT;

THENCE NORTH 79 DEGREES 48 MINUTES 00 SECONDS WEST, ALONG THE COMMON LINE OF LOT 24 AND 26, A DISTANCE OF 263.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 2.6424 ACRES (115,104 SQUARE FEET) OF LAND.

EXHIBIT "B"

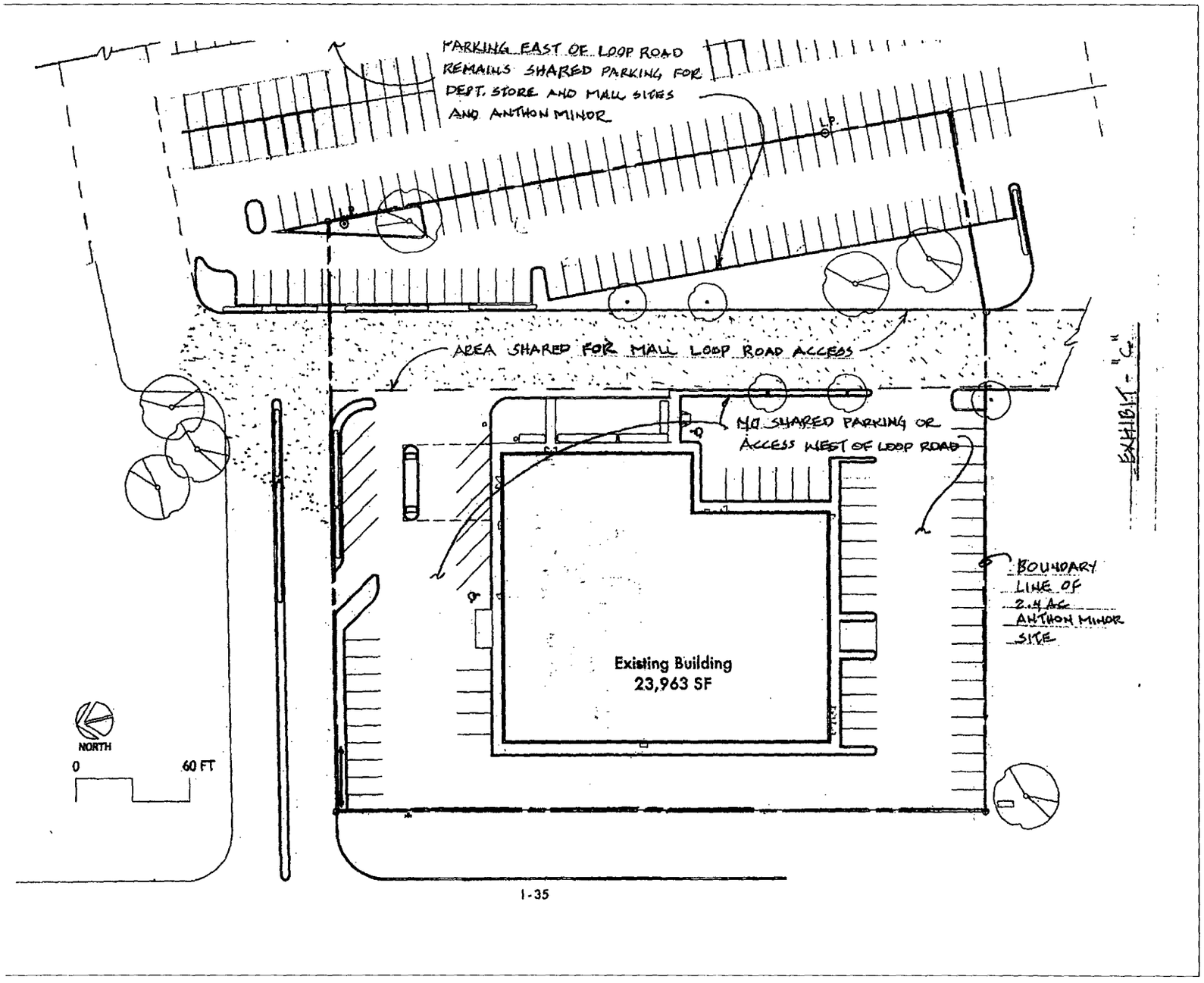

PARKING EAST OF LOOP ROAD
REMAINS SHARED PARKING FOR
DEPT. STORE AND MALL SITES
AND ANTHON MINOR
AREA SHARED FOR MALL LOOP ROAD ACCESS
NO SHARED PARKING OR
ACCESS WEST OF LOOP ROAD
BOUNDARY
LINE OF
2.4 AC
ANTHON MINOR
SITE
Existing Building
23,963 SF
NORTH
0
60 FT

EXHIBIT - "C"

RECORDER'S MEMORANDUM
AT THE TIME OF RECORDATION, THIS INSTRUMENT WAS FOUND TO BE INADEQUATE FOR THE BEST PHOTOGRAPHIC REPRODUCTION BECAUSE OF ILLEGIBILITY, CARBON OR PHOTO COPY DISCOLORED PAPER ETC.

Any provision herein which restricts the sale, or use of the described real property because of race is invalid and unenforceable under Federal Law
STATE OF TEXAS, COUNTY OF BEXAR
I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me and was duly RECORDED in the Official Public Record of Real Property of Bexar County, Texas on:

FEB 12 2007

COUNTY CLERK BEXAR COUNTY, TEXAS

Doc# 20070034080 Fees: $44.00
02/12/2007 11:41AM # Pages 8
Filed & Recorded in the Official Public Records of BEXAR COUNTY
GERRY RICKHOFF COUNTY CLERK

CHICAGO TITLE GF# 20004463
20005102 $81.00

COVENANTS, CONDITIONS AND RESTRICTIONS AGREEMENT
APPLEBEE'S, OLIVE GARDEN AND WENDY'S OUTLOTS
WINDSOR PARK MALL

2000- 0188798

This Covenants, Conditions and Restrictions Agreement (hereinafter sometimes referred to as the "Agreement") made and entered into as of this 1st day of November, 2000, by and between SIMON PROPERTY GROUP (TEXAS), L.P., a Texas limited partnership (hereinafter referred to as "Developer") and DICKER-WARMINGTON PROPERTIES, a California general partnership (hereinafter referred to as "DWP") and MONTE MAC NO. 2, a California limited partnership (hereinafter referred to as "MM2") (collectively DWP and MM2 are, or individually based on the context, hereinafter referred to as "Owner").

WITNESSETH:

WHEREAS, Developer is the owner of certain real property described in Exhibit A attached hereto and made a part hereof (which property is hereinafter referred to as "Developer's Property"); and

WHEREAS, Owner is the owner of certain real property located adjacent to or in close proximity to Developer's Property which it purchased from Developer on November 1, 2000 (hereinafter the "Closing Date"), which property identified as the Applebee's Parcel (owned by MM2), the Olive Garden Parcel (owned by DWP) and the Wendy's Parcel (owned by MM2), respectively, is more particularly described in Exhibits B-1, B-2 and B-3 attached hereto and made a part hereof (collectively hereinafter referred to as the "Parcels"), and is shown for information purposes as of the date hereof on the site plan attached hereto as Exhibit C; and

WHEREAS, Owner may hereafter elect to convey, lease or otherwise transfer, subject to the terms and conditions hereinafter set forth, all or certain portions of the Parcels to other persons or entities; and

WHEREAS, by reason of the proximity of the Parcels to Developer's Property, which is part of the shopping center site commonly known as Windsor Park Mall (the "Center"), Developer and other owners of the property adjacent to, or in close proximity to, the Center have a substantial interest in the development of the Parcels; and

VOL 8630 PG 1609

This document was prepared by and
~~after recording should be returned to:~~

Marc C. Frankenstein, Esq.
Simon Property Group
115 West Washington Street
Indianapolis, Indiana 46204

Return to Interstate Title Services, Inc.
1897 Palm Beach Lakes Blvd. Ste. 125
West Palm Beach, Fl. 33409

vpd

WHEREAS, as a condition to Developer's agreement to sell the Parcels to Owner, the parties have agreed to subject the Parcels to the terms, conditions and provisions of this Agreement in the manner hereinafter set forth.

NOW, THEREFORE, for and in consideration of Ten and 00/100 Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the mutual covenants hereinafter set forth, the parties, intending to be legally bound, do hereby agree as follows:

1. IMPROVEMENTS TO THE PARCEL

a. Improvements Subject to Developer Approval. Developer and Owner acknowledge and agree that Developer has an interest in the manner in which all property adjacent to or in close proximity to the Center is developed, including the Parcels. Accordingly, Developer shall have the right to review and approve (such approval not to be unreasonably withheld or delayed) any and all plans for the reconstruction, replacement, remodeling, alteration, addition, installation or modification in which the exterior shall be materially changed from the original construction (collectively "Reconstruction") of any building located on the Parcels (collectively "Improvements") to ascertain that such Improvements are compatible with and will not materially and adversely affect other portions of the Center with respect to, without limitation, matters of signage, parking, building height and other similar matters that could have a material and detrimental impact on other portions of the Center; provided, however, such approval by Developer shall not be deemed to be an assumption of the responsibility by Developer for the accuracy, sufficiency or propriety of the Plans and Specifications (as such term is hereinafter defined) or a representation that the Plans and Specifications provide for the Reconstruction of Improvements that comply with applicable laws, rules, ordinances, regulations, covenants or restrictions.

b. Submission of Plans. No later than thirty (30) days prior to the commencement of any Reconstruction of Improvements on a Parcel or any portion thereof, Owner shall deliver to Developer one (1) reproducible set (sepia) and four (4) copies of its schematic site plan or plans showing the following: (i) location of any new buildings or replacement of existing buildings; (ii) the outdoor or exterior facilities and areas, and related improvements (including material changes, if any, to ingress and egress, curb cuts, signage and lighting); (iii) the location and nature of exterior decorative features; (iv) building height and building area; and (v) outline plans of the building shell of any and all buildings to be constructed on the Parcel, showing principal exterior dimensions and exterior design concept, trash/service area and shielding. All of the above-mentioned plans are hereinafter referred to as the "Plans and Specifications" and that work conducted by Owner or Owner's agents, contractors or subcontractors as specified or depicted in the Plans and Specifications shall be referred to in this Agreement as "Owner's Work".

c. Developer Objections. Within twenty (20) calendar days after Developer's receipt of the last to be delivered of the Plans and Specifications as hereinabove and as hereinafter provided, Developer shall review such Plans and Specifications to determine that the proposed

VOL 8630 PG 1610

Improvements will not cause a material adverse and detrimental affect on any other portion of the Center with respect to those matters set forth in Section 1.a. above. Developer shall at all times act reasonably and in good faith in approving or disapproving Owner's Plans and Specifications. Developer's approval of the Plans and Specifications shall be evidenced by Developer initialing one (1) copy thereof and returning the same to Owner. Notwithstanding anything herein to the contrary, so long as Owner or its tenant is a national or regional chain, Developer's approval shall not be required for any exterior modifications, so long as the building on the Parcel will not be altered, expanded or changed to the extent that the aggregate floor area of such building will exceed (i) 8,500 square feet for the Applebee's Parcel, (ii)10,000 square feet for the Olive Garden Parcel and (iii) 5,000 square feet for the Wendy's Parcel. In the event the proposed building exceeds the foregoing floor area limitations, Owner shall submit its Plans and Specifications as set forth above, and Developer's approval shall not be unreasonably withheld. Further, to the extent of a conflict between the provisions of the existing Leases (as hereinafter defined) and this Agreement with respect to approvals required for any construction or Reconstruction, the least restrictive provisions shall control so long as the applicable Lease remains in full force and effect.

Should Developer fail to deliver to Owner its approval or disapproval of Owner's Plans and Specifications in writing (i) within twenty (20) calendar days after receipt of the Plans and Specifications, and (ii) within ten (10) days after written notice is delivered by Owner to Developer, after expiration of the initial twenty (20) day period (which notice shall advise Developer that failure to respond within ten (10) days will result in the Plans and Specifications being conclusively presumed to be approved), then Developer shall be conclusively presumed to have approved the Plans and Specifications. In the event of disapproval, Owner shall revise the Plans and Specifications to incorporate any and all changes as may be reasonably requested to secure Developer's approval and shall deliver to Developer one (1) reproducible set (sepia) and four (4) copies of the revised Plans and Specifications. Within ten (10) calendar days after Developer's receipt of the revised Plans and Specifications Developer shall review such revised Plans and Specifications in accordance with all the provisions of this Section 1. Should Developer fail to deliver to Owner its approval or disapproval of the revised Plans and Specifications in writing within (i) ten (10) calendar days after receipt of the revised Plans and Specifications and (ii) within ten (10) days after written notice is delivered by Owner to Developer, after expiration of the initial ten (10) day period (which notice shall advise Developer that failure to respond within ten (10) days will result in the revised Plans and Specifications being conclusively presumed to be approved), then Developer shall be conclusively presumed to have approved the revised Plans and Specifications. In the event of reasonable disapproval of the revised Plans and Specifications Owner shall further revise the Plans and Specifications and deliver the same to Developer for review in accordance with the provisions of this paragraph.

d. Continuing Right of Approval. The Transfer (as such term is defined in Section 8 hereof) of the Parcels, or any part thereof, or the review and approval of Plans and Specifications by any federal, state, county or municipal agency, board, department or other governmental or quasi-governmental body (the "Local Authorities") in connection with the granting of a permit,

VOL 8630 PG 1611

license or other governmental approvals, shall in no way be deemed to preclude Developer from exercising its approval rights of Plans and Specifications prior to the commencement of any and all Reconstruction on the Parcels.

e. Shopping Center REA. Owner acknowledges the receipt of a copy of that certain (said Easement and Operating Agreement by and among Windsor Park Development Company, J.C. Penney Properties, Inc., Montgomery Ward Development Corporation, Construction Developers, Incorporated, Dillard Department Stores, Inc., Alstores Realty Corporation and Allied Stores of Texas, Inc. dated September 10, 1974 and recorded October 1, 1974 in Volume 7451, Page 649 of the Deed Records of Bexar County, Texas, as amended by the following:

i. Modification of Easement and Operating Agreement dated May 5, 1975 and recorded in Volume 7693, Page 199 of said Deed Records;

ii. Second Amendment of Easement and Operating Agreement dated April 15, 1977 and recorded in Volume 8069, Page 704 of said Deed Records;

iii. Third Amendment of Easement and Operating Agreement dated July 16, 1985 and recorded in Volume 4820, Page 1829 of said Deed Records; and

iv. Fourth Amendment of Easement and Operating Agreement dated November 20, 1990 and recorded in Volume 5004, Page 585 of said Deed Records;

(said agreement, as the same may be amended from time to time, and all agreements executed in substitution therefor or in restatement thereof, so long as such future amendments, substitutions or restatements do not materially affect Owner's operation or use of the Parcels, being herein called the "REA"). Owner acknowledges and agrees that Owner has purchased the Parcels subject and subordinate to the REA including, but not limited to, any and all provisions contained in the REA restricting development on the Parcels. Owner further agrees, after written notice from Developer, to defend and indemnify Developer against any claims, damages, lawsuits or other actions arising from the failure of Owner to comply with the terms and provisions of the REA on the Parcels, including, but not limited to, provisions concerning the maintenance, redevelopment and use of the Parcels.

f. Signage and Height Conditions. Subject to the prior approval rights of Developer set forth in this Agreement, and without limitation of any other provision of this Agreement, the REA, applicable Laws (as hereinafter defined) or the approved Plans and Specifications (the most stringent of which shall apply), the following conditions are agreed to by Owner:

i. Owner, at its sole cost and expense, may erect and maintain one (1) pylon sign on the Olive Garden Parcel, one (1) pylon sign on the Applebee's Parcel and one (1) pylon sign on the Wendy's Parcel provided that: 1) the height of such pylon sign does not exceed forty (40) feet; 2) the area of each sign panel does not exceed one

VOL 8630 PG 1612

hundred fifty (150) square feet per panel with a maximum of two (2) panels per sign; 3) such sign does not materially obstruct the visibility of the Center or any other signs identifying the Center or other occupants; and 4) Owner receives all necessary governmental permits for such sign;

ii. Except and unless a pylon sign is permitted and erected on a Parcel, Owner, at its sole cost and expense, may erect and maintain one (1) monument sign on each Parcel provided that 1) the height of such monument sign does not exceed twelve (12) feet in height; 2) the area of each sign panel does not exceed fifty (50) square feet per panel with a maximum of two (2) panels per sign; 3) such sign does not materially obstruct the visibility of the Center or any other signs identifying the Center or other occupants of the Center; and 4) Owner receives all necessary permits for such sign;

iii. Owner, at its sole cost and expense, may install and maintain on each Parcel no more than four (4) fascia signs on the fascias of its building, but not on the roof thereof, the length of such fascia sign not to exceed eighty percent (80%) of the length of the fascia on which it is installed and its letters being internally and individually lit and not exceeding forty-eight (48) inches in height;

iv. Other than those permitted herein, no sign shall be permitted upon the Parcels unless such sign has been first approved by Developer as part of approved Plans and Specifications, or otherwise approved by Developer, such approval not to be unreasonably withheld or delayed; provided that Developer's approval shall not be required for temporary signs professionally prepared and used in conjunction with a tenant's regional or national advertising campaign. All signs shall be professionally prepared, in keeping with the operation of a first class shopping center, and in compliance with all applicable laws, codes, ordinances, rules, regulations, covenants and restrictions ("Laws");

v. No temporary sign (except for (i) development information signs during the period prior to the completion of Reconstruction of Owner's Work or leasing signs or banners and (ii) signs professionally prepared and used in conjunction with a tenant's regional or national advertising campaign), paper sign, flag, banner or streamer shall be permitted upon any portion of the Parcels at any time; and

vi. The height of any Improvements on the Parcel shall not exceed the lesser of one (1) story plus a mezzanine or twenty-eight (28) feet in height, unless the Improvements are a regional or national prototype. Notwithstanding the above, the average height of any Improvements for a regional or national prototype shall not exceed thirty (30) feet.

VOL 8630 PG 1613

g. Restrictions on Actions. Owner acknowledges that the Parcels are a part of an integrated development comprising a variety of uses in which certain actions of Owner may have an adverse effect on the Center. Therefore, without limitation of the provisions of this Section 1 or any other provisions of this Agreement, Owner agrees not to take any of the following actions without Developer's prior written consent, which consent shall not be unreasonably withheld or delayed:

i. make any request or application to any governing body having jurisdiction over public roads and highways adjacent to the Parcels, including, but not limited to, any state, county or local highway department of transportation, for any curb cuts or other access points providing access from such public roads to the Parcels, if such curb cuts are not located entirely on the Parcels; nor

ii. submit the Plans and Specifications to a Local Authority in connection with any change or modification in zoning, the issuance of a building permit or other permits, licenses or approvals, or for any other reason, unless such Plans and Specifications have, if applicable, been reviewed and approved in advance by Developer in accordance with this Section 1.

If any changes are requested or required by a Local Authority to approved Plans and Specifications, such changes shall be subject to Developer's review and approval or disapproval in accordance with Section 1 hereof. Owner shall deliver to Developer for its review written notice of the requested or required changes. Should Developer fail to deliver to Owner its approval or disapproval of the changes in writing within fifteen (15) days after receipt of Owner's written notice, then Developer shall be conclusively presumed to have approved the changes.

h. No Barrier. No barricades, fences or other material obstructions shall be erected, installed or maintained by Owner or Developer which would in any manner impede vehicular or pedestrian traffic on, across, over or between the common areas on the Parcels and the common areas of the Center (other than reasonable directional markers and traffic control devices).

2. MAINTENANCE OF THE PARCEL BY OWNER

a. Standard of Maintenance. Owner shall maintain or cause to be maintained the Parcels and all Improvements located thereon, including the exterior of any building or buildings, pedestrian walks, landscaped areas, exterior lighting and signage and other Improvements, in a good, sightly and safe condition, appearance and repair consistent with and similar to the Center, and further shall at all times, and from time to time, cause the prompt removal of all paper, debris, refuse, snow and ice and the sweeping of paved areas (if any) when and as required in order that the Parcels be maintained as above provided, and will maintain the unimproved portions of the Parcels in a similar good, sightly and safe condition.

VOL 8630 PG 1614

b. Fire and Casualty; Condemnation. In the event of damage or destruction to any Improvements on the Parcels by reason of fire or other casualty or the loss of any part of the Parcels or Improvements thereon by reason of condemnation, Owner shall perform or cause to be performed either: (i) prompt restoration of such Improvements to the condition existing prior to such damage, destruction or condemnation; or (ii) razing and removal of any such Improvements, in which event Owner shall replace such Improvement with either (A) paved parking or other Improvements or uses consistent with this Agreement or (B) landscaping (such as grass).

c. Action by Developer. In the event that Owner shall fail or refuse to maintain the Parcels as above provided, then Developer shall have the right, upon thirty (30) days' prior written notice to Owner specifying the manner in which Owner has failed to maintain the Parcels (unless within such thirty (30) day period Owner shall complete the required maintenance, or in the case of maintenance which by its nature cannot be completed within such thirty (30) day period, Owner shall take such action as is reasonably calculated to commence the required maintenance and thereafter shall diligently prosecute the maintenance to completion), to enter upon the Parcels and perform the maintenance set forth in said notice, all in the name of and for the account of Owner. Developer shall have the absolute right of entry upon the Parcels to perform such maintenance and shall in no event be held to be a trespasser upon the Parcels, but no entry in any buildings is authorized nor shall the permitted business and operations of the tenants on the Parcels be unreasonably disturbed. Developer, by reason of its doing so, shall not be liable or responsible to Owner or any other person or entity for any losses or damages thereby sustained by Owner or any occupants of the Parcels or of anyone claiming by or under either an occupant or Owner, unless such loss or damage arose from the negligence or willful misconduct of Developer, its agents, contractors or employees in performing any such maintenance. The reasonable and necessary cost of such maintenance shall be paid by Owner to Developer within thirty (30) days after the date of receiving a statement therefor, which statement shall specify the details of the maintenance performed and the cost thereof. In the event that Owner shall fail to pay Developer any such amount when due, Developer shall have all of the rights and remedies provided for in Section 11 hereof.

d. Conflict. Notwithstanding the foregoing maintenance standards, in the event of a conflict between such provisions and similar provisions in the Leases (as hereinafter defined), the Owner's maintenance obligations hereunder shall not exceed the obligations of the tenants for such matters under the Leases so long as the Leases remain in full force and effect.

3. MAINTENANCE AND MANAGEMENT OF PARKING AREA BY OWNER

a. Standard of Maintenance. Notwithstanding any provision in Section 2 to the contrary, Owner shall operate and maintain, or cause to be operated and maintained, that portion of the Parcels designed or designated from time to time to be used as access drives and parking areas for motor vehicles, including appurtenant landscaped areas, exterior lighting and signage (hereinafter referred to as "Parking Area") in good and sightly order, condition and repair.

VOL 8630 PG 1615

Without limiting the generality of the foregoing, Owner, in the operation and maintenance of the Parking Area, shall observe the following standards:

i. Maintain the surface of the Parking Area in a level, smooth and evenly covered manner with the type of surfacing material originally installed thereon, or such reasonable alternative or substitute thereof as shall be in all respect equal thereto in quality, appearance and durability;

ii. Remove all paper, snow and ice, debris, filth and refuse from the Parking Area and wash or thoroughly sweep paved areas as reasonably required;

iii. Maintain such appropriate parking lot entrance, exit and directional signs and markers in the Parking Area as shall be reasonably required and in accordance with the practices prevailing in the operation of first class regional shopping centers in the San Antonio, Texas metropolitan area. Lighting shall be maintained in the Parking Area on the Parcels during the business hours of Owner, when such lighting is reasonably required;

iv. Clean lighting fixtures in the Parking Area and relamp as reasonably required;

v. Repaint striping, markers, directional signs, etc. in the Parking Area as reasonably required;

vi. Maintain and replace landscaping outside of Owner's building curb as reasonably required, including mowing of grass, and removal and replacement of dead shrubbery; and

vii. Prevent the erection of any barricades, fences or other barriers which would in any manner impede vehicular or pedestrian traffic on, across, over or between the common areas on the Parcels and the Center.

b. Action by Developer. In the event that Owner shall fail or refuse to maintain the Parking Area as above provided, then Developer shall have the right, upon ten (10) days' prior written notice to Owner specifying the manner in which Owner has failed to maintain the Parking Area (unless within such ten (10) day period Owner shall complete the required maintenance, or in the case of maintenance which by its nature cannot be completed within such ten (10) day period, Owner shall take such action as is reasonably calculated to commence the required maintenance and thereafter shall diligently prosecute the maintenance to completion), to enter upon the Parcels and perform the maintenance set forth in said notice, all in the name of and for the account of Owner. Developer shall have the absolute right of entry upon the Parcels to perform such maintenance and shall in no event be held to be a trespasser upon the Parcels, but no entry in any buildings is authorized nor shall the permitted business and operations of the tenants on the Parcels be unreasonably disturbed. Developer, by reason of its doing so, shall not

VOL 8630 PG 1616

be liable or responsible to Owner or any other person or entity for any losses or damages thereby sustained by Owner or any occupants of the Parcel or of anyone claiming by or under either an occupant or Owner, unless such loss or damage arose from the willful misconduct or negligence of Developer, its agents, contractors or employees in performing any such maintenance. The reasonable and necessary cost of such maintenance, shall be paid by Owner to Developer within ten (10) days after the date of receiving a statement therefor, which statement shall specify the details of the maintenance performed and the costs thereof. In the event that Owner shall fail to pay Developer any such amounts when due, Developer shall have all of the rights and remedies provided for in Section 11 hereof.

c. Conflict. Notwithstanding the foregoing maintenance standards, in the event of a conflict between such provisions and similar provisions in the Leases (as hereinafter defined), the Owner's maintenance obligations hereunder shall not exceed the obligations of the tenants for such matters under the Leases so long as the Leases remain in full force and effect.

4. MAINTENANCE AND MANAGEMENT OF COMMON AREAS BY DEVELOPER

Common Areas of the Center are defined as: all parking areas, ring roads, access roads and facilities furnished, made available or maintained by Developer in or near the Center and outside of the Parcels, including employee parking areas, truck ways, driveways, loading docks and areas, delivery areas, multi-story parking facilities (if any), package pickup stations, exterior elevators, escalators and pedestrian sidewalks, malls, courts and ramps, landscaped areas, retaining walls, exterior stairways, bus stops, first-aid and comfort stations, lighting facilities, sanitary systems, utility lines, water filtration and treatment facilities and other areas and improvements provided by Developer for the general use in common of occupants, tenants and their customers, department stores and outlot owners in the Center.

The parties acknowledge that the Parcels are subject to certain leases between Developer, or its predecessor, and the named tenants (the "Leases"), that the Developer has assigned its right, title and interest in said Leases to Owner and that Owner has assumed the terms, covenants, agreements, provisions and obligations of the landlord under said Leases, which Leases are identified as follows:

a. Lease by and between Seller, as Landlord, and Milton A. Stahl and Joel S. Marks, as Tenant, dated April 17, 1996, as modified and supplemented by (i) Guaranty by Applejam of Texas, Inc., dated April 8, 1996, (ii) Memorandum of Lease dated as of April 14, 1996 and recorded November 15, 1996 in Volume 6932, Page 961 of the Deed Records of Bexar County, Texas, (iii) Assignment of Lease by and between Joel S. Marks and Milton A. Stahl, as Assignor, and Applejam, Inc., as Assignee, dated October ___, 1997, (iv) Consent to Assignment by Seller, Joel S. Marks, Milton A. Stahl, Applejam of Texas, Inc. and Applejam, Inc., and (v) Landlord's Waiver of Lien and Agreement dated November 13, 1997 (collectively, the "Applebee's Lease");

VOL 8630 PG 1617

b. Lease by and between Windsor Park Development Company, a Texas limited partnership, as Landlord, and Creative Dining Division of General Mills Restaurant Group, Inc., as Tenant, dated April 14, 1987, as modified and supplemented by (i) Agreement Setting Lease Term dated April 21, 1988, (ii) Memorandum of Lease dated September 16, 1988, recorded in Volume 4410, Page 613 of the Deed Property Records of Bexar County, Texas, and (iii) Lease Amendment dated as of April 1, 1991 (collectively, the "Olive Garden Lease"); and

c. Ground Lease dated April 2, 1976 by and between Windsor Park Development Company, a Texas limited partnership, as Landlord, and Wendy's of San Antonio, Inc., as Tenant, as modified and supplemented by (i) Guaranty on behalf of Tenant dated April 2, 1976 by Jesse M. Hellums and C. H. Roman, (ii) Memorandum of Lease dated August 30, 1984 and recorded September 10, 1984 in Volume 3209, Page 225 of the Deed Property Records of Bexar County, Texas, (iii) Agreement Setting Lease Term dated July 7,1977, and (iv) letter dated August 2, 1996 by Wendy's of San Antonio, Inc., providing notice of exercise of the first five (5) year option (collectively, the "Wendy's Lease").

The "Developer" under the REA and the "Landlord" under the Leases are subject to certain covenants and have certain duties and obligations regarding the Common Areas. Notwithstanding anything in the REA or the Leases to the contrary and the assignment of the Leases to Owner, Developer covenants that Developer, its successors and assigns, shall retain and perform those certain duties of the "Developer" under the REA and "Landlord" under the Leases, subject to the terms of the REA and Leases and only to the extent recited therein, to insure, construct, install, maintain, repair and replace the Common Areas defined herein and in the REA and the Leases. In addition to such covenants, Developer hereby agrees after written notice from Owner to defend, indemnify and hold Owner harmless from and against any claims, damages or lawsuits brought by any parties under the REA or the tenants under the Leases arising from Developer's failure to satisfy its obligations with respect to such Common Areas, as set forth herein or as set forth in the REAs and the Leases.

Developer further agrees, after written notice from Owner, to defend and indemnify Owner against any claims, damages or lawsuits arising from the failure of Developer to satisfy its obligations under the terms of the Leases or under the REA with respect to portions of the Center outside of the Parcel.

5. <u>GRANT OF EASEMENT OVER, AND MAINTENANCE AND USE OF RING ROAD AND ENTRANCE DRIVES</u>

a. <u>Access Maintenance Charge</u>. Owner shall pay, without deduction, set-off or prior demand, as its contribution to costs and expenses for the repair, maintenance, restoration and improvement of the Center ring road (the "Ring Road") and entrance drives (the "Entrance Drives"), the sum of Eight Thousand Two Hundred Fifty and 00/100 Dollars ($8,250.00) for the

VOL 8630 PG 1618

Applebee's Parcel until the Applebee's Lease is terminated or expires, and Six Hundred Sixty-One and 25/100 Dollars ($661.25) for the Olive Garden Parcel, for a total of Eight Thousand Nine Hundred Eleven and 25/100 Dollars ($8,911.25) per year for the Parcels (the "Access Maintenance Charge"), commencing at the Closing Date. The Access Maintenance Charge shall be payable in equal monthly installments, in advance, within fifteen (15) days after the close of each month, and will be increased by fifteen percent (15%) for the fiscal year commencing on February 1, 2003 and by an additional fifteen percent (15%) every five (5) years thereafter on the anniversary of such date. The Access Maintenance Fee for the Applebee's Parcel shall be reduced upon the expiration or earlier termination of the Applebee's Lease, to the amount then in effect for the Olive Garden Parcel. The Access Maintenance Charge shall be further increased upon expiration or earlier termination of the Wendy's Lease by the sum of Fifty and 00/100 Dollars ($50.00) per year for the Wendy's Parcel.

b. Non-Exclusive Easement to Owner. Developer does hereby create, grant and convey unto Owner, its tenants, licensees, and invitees, a permanent, non-exclusive easement in common with Developer and all others to whom Developer has granted or may hereafter grant rights, over, upon and across the Ring Road and Entrance Drives, as they may be changed from time to time, for purposes of access, ingress and egress to and from the Parcels. Developer reserves the right, in its sole discretion, to change from time to time the configuration, location, number and size of the Ring Road and Entrance Drives, so long as Owner's access to public streets, and to the Ring Road and Entrance Drives, is not materially impaired. The number, location and size of any curb cuts for ingress and egress to and from the Parcels onto the Ring Road and Entrance Drives shall be subject to the prior written approval and consent of Developer and the approval rights, if any, of any occupant of the Center pursuant to the terms and provisions of the REA or otherwise. Developer shall take no action which would materially impair Owner's access to the Ring Road and Entrance Drives, as they may be changed from time to time. In the event of either (i) termination, relocation or change of rights and easements for access over the Ring Road and Entrance Drives as a result of the expiration or earlier termination of the REA, or (ii) the need for granting of a separate access easement in order to comply with a requirement of the Local Authorities for consent to redevelopment of a Parcel, Developer shall create, grant and convey to Owner an access easement over Developer's Property the terms and description of which shall be subject to Owner's reasonable approval.

c. Continuing Obligation. In the event that Owner shall Transfer (as such term is defined in Section 9 herein) Owner's complete interest in the Applebee's Parcel, Olive Garden Parcel and/or Wendy's Parcel, the Owner's transferee shall be responsible for payment of the Access Maintenance Charge allocable to such Parcel(s), and, except as provided below, Owner shall be released from further liability for the Access Maintenance Charge allocable to the transferred Parcel(s) arising or accruing from and after the effective date of such Transfer, provided that the following conditions are satisfied:

i. With respect to accrued liability, any and all amounts which shall then be due and payable by Owner shall have been paid to Developer;

VOL 8630 PG 1619

ii. Developer shall have received promptly after the effective date of such Transfer, written notice from Owner of the Transfer and the name and address of the transferee;

iii. Neither Owner, Owner's nominee, a partnership or joint venture in which Owner holds an interest, or Owner's Affiliate (as such term is defined hereinafter) holds title to the transferred Parcel(s), or any portion thereof or any interest therein.

If Owner shall fail to deliver any such written notice or pay any accrued amounts due, liability for payment of the Access Maintenance Charge shall continue to be binding upon and enforceable against Owner until such failure is cured; notwithstanding the foregoing, such liability shall be binding upon and enforceable against the transferee at all times. In the event that the Owner shall fail to pay to Developer any amounts to be paid under this Section 5, when due, Developer shall have all the rights and remedies provided for in Section 11 hereof.

d. "Affiliate" Defined. As used in this Agreement, the word "Affiliate" shall mean (a) any corporation or other entity that directly or indirectly controls, is controlled by or is under common control with Owner, (b) an entity at least a majority of whose economic interest is owned by Owner, (c) any general or limited partnership, or limited liability partnership in which Owner is a general partner, or (d) any limited liability company in which Owner is a substantial (more than thirty percent (30%)) member. For purposes of this paragraph, "control" shall mean the power to direct the management of such entity through voting rights, ownership or contractual obligations.

6. USE

a. Permitted Use. Owner agrees that it shall use, occupy and operate the Parcels, or shall cause the Parcels to be used, occupied and operated, for the construction and operation of the following:

i. in the case of the Applebee's Parcel, a sit-down, table service restaurant with or without related bar serving alcoholic beverages for on-site consumption incidental to such restaurant operation;

ii. in the case of the Olive Garden Parcel, a sit-down restaurant serving or not serving alcoholic beverages; and

iii. in the case of the Wendy's Parcel, a restaurant for the sale of food and beverages, including beer and wine or no beer or wine,

and for no other uses or purposes whatsoever without, in each and every instance, the prior written consent of Developer not to be unreasonably withheld ("Permitted Use").

VOL 8630 PG 1620

b. Change of Use. If Owner proposes to change the primary use of the Parcel from the Permitted Use, Owner shall first notify Developer in writing of the proposed primary use (hereinafter referred to as "Proposed Use"). In no event shall Owner be entitled to propose a Proposed Use or make a change of use which would violate the REA or the exclusive use rights (i.e., the right granted by Developer to an owner or tenant in the Center to exclusively sell or lease a specific category of merchandise or type of service or restaurant) granted from time to time to other owners and tenants in the Center, so long as such exclusive rights continue to be binding on Developer and the Center (an "Exclusive"). Developer agrees to act in good faith and in a reasonable commercial manner in granting exclusives subsequent to this Agreement, that pertain to the Parcels. Developer shall not withhold its consent to a Proposed Use for any other restaurant theme or style so long as such Proposed Use is not in violation of any prohibition, restriction or exclusive to which the Parcel, Center or Developer is bound at the time of Owner's proposed change of use, and so long as such Proposed Use does not duplicate any other use then operating on an outlot in the Center.

c. Prohibited Uses. For so long as the Center is operated as a commercial real estate establishment, in no event shall the Parcels or any part thereof be used for any use prohibited under the REA, or for any purpose or purposes which would produce or be accompanied by the following characteristics:

i. Any noise, vibration, litter, odor (obnoxious or toxic), dust, dirt or other activity which may constitute a public or private nuisance;

ii. Any unusual firing, explosive or other damaging or dangerous hazards;

iii. Any factory use, warehouse operation, processing or rendering plant, or any assembling, manufacturing, distilling, refining, smelting, industrial, agriculture, drilling or mining operation;

iv. Any trailer court, mobile home park, lot or showroom for sale of new or used motor vehicles, trailers or mobile homes, labor camp, junk yard, stockyard or animal raising;

v. Any dumping, disposal, incineration or reduction of garbage or refuse other than handling or reducing such waste if produced on the premises from authorized uses and if handled in a reasonably clean and sanitary manner;

vi. Any commercial laundry or dry cleaning plant, laundromat, car or truck washing establishment;

vii. Any automobile, truck, trailer or other motor vehicle body, fender or other repair work, or any gasoline or fuel pumps, except on the Wendy's Parcel;

VOL 8630 PG 1621

viii. Any automobile, truck, trailer or other motor vehicle painting or customizing work;

ix. Any cemetery, mortuary or crematorium;

x. Any pool or billiard establishment, amusement center or game room, bowling alley, amusement park or gallery, carnival, sporting event or other sports activity or shooting gallery; provided that use as a pool or billiard establishment, amusement center or game room shall not be prohibited if conducted as an integral portion of a restaurant;

xi. Any second hand store, surplus store or flea market;

xii. Any drug rehabilitation center, "halfway" house or massage parlor; any health club in excess of ten thousand (10,000) square feet;

xiii. Any so-called "off-track betting" operation; or

xiv. Any sale or display of pornographic materials, adult book store, or adult entertainment use or any other manner or use which is inconsistent with a family entertainment center and retail destination.

For purposes of this Section 6, it is specifically acknowledged and agreed that the Center shall not be deemed to be no longer operating due to temporary cessations of operations resulting from damage and destruction, casualty, force majeure or any other cause not the fault of Developer.

In addition to the foregoing, Owner acknowledges and agrees that Owner's use, occupation, operation and development of the Parcels shall be in all respects subject to those restrictions and limitations applicable to the Parcels contained in the REA and shall be in compliance with applicable Laws, including but not limited to zoning regulations.

7. PARKING RATIO

Except with respect to the Wendy's Parcel, Owner shall maintain or cause to be maintained on each Parcel at all times no fewer than five (5) parking spaces for every one thousand (1,000) square feet of floor area in any building constructed on the Parcel.

8. CONSTRUCTION BY OWNER

a. Owner's Construction Work. To the extent Owner elects to perform, or cause to be performed, development (including design, engineering, construction and installation) of the Improvements to be located on the Parcels, and to perform, or cause to be performed, all other work associated with the development of the Parcels (all included within the term "Owner's Work", as previously defined herein), then such Owner's Work shall be performed only in

OR 8630 PG 1622

accordance with the Plans and Specifications, if any, approved by Developer in accordance with the process described in Section 1 of this Agreement.

b. Utility Lines Serving the Center. Owner shall be responsible for field verification of the location of any and all utilities (including existing irrigation, exterior light or pylon sign utility runs serving the Center or neighboring developments) contained on the Parcels prior to commencement of Owner's Work. If any of the utility runs are cut or damaged during Owner's Work, Owner shall repair, replace and/or reposition the utility run immediately, at Owner's sole cost and expense, and shall notify the Center's operation director or Developer's tenant coordinator prior to beginning any such work.

c. General Construction Requirements.

(1) Construction Standards. Owner's Work shall be done (a) at Owner's sole cost and expense, (b) by contractors or subcontractors who are appropriately licensed, fully bonded and sufficiently insured, and (c) in substantial compliance with the approved Plans and Specifications. Owner agrees that all Construction activities performed by Owner, or on Owner's behalf, shall be performed in compliance with all applicable laws, rules, regulations, orders, and ordinances of all governmental bodies having jurisdiction over the Parcel and Developer's Property. All Construction shall utilize new materials, and shall be performed in a good, safe and workmanlike manner. Owner's Construction activities shall not: (i) cause any unreasonable increase in the cost of constructing improvements, if any, by Developer, (ii) unreasonably interfere with construction work, if any, being performed on any other part of the Developer's Property, (iii) unreasonably interfere with the operation, use, occupancy or enjoyment of any part of Developer's Property by Developer, any other party or its permittees, or (iv) cause any building located on the Developer's Property to be in violation of any Laws.

(2) Indemnification of Developer. Owner agrees to defend, protect, indemnify and hold harmless Developer from and against all claims and demands, including any action or proceeding brought thereon, and all costs, loss, expenses and liabilities of any kind relating thereto, including reasonable attorney fees and cost of suit, arising out of or resulting from any construction activities performed or authorized by Owner; provided, however, that the foregoing shall not be applicable to either events or circumstances caused by the gross negligence or willful act or omission of Developer, its licenses, concessionaires, agents, servants, employees, or any one claiming by, through or under any of them.

VOL 8630 PG 1623

9. OWNER'S TRANSFER

a. Transfer. As used in this Agreement, the term "Transfer" shall mean a sale, lease, assignment, transfer, alienation or conveyance (or agreement to do any of the foregoing) of the Parcels, or any portion thereof, or any interest therein, whether any such sale, lease, assignment, transfer, alienation or conveyance is effectuated directly, indirectly, voluntarily or involuntarily, by Owner or any third party, by operation of law or otherwise. The term "Transfer" shall not include any lien, pledge, deed of trust, mortgage or other encumbrance of the Parcels to finance the development of the Parcels.

b. Notice to Developer. Owner shall notify Developer of the occurrence of any Transfer. Such notice shall be in writing, addressed to Developer as provided in Section 13 hereof, and shall be sent no more than fifteen (15) business days prior to the conclusion of such Transfer.

10. INTENTIONALLY DELETED.

11. REMEDIES

In the event that Owner either (i) fails to pay Developer when due any amounts owed by Owner to Developer under this Agreement, or (ii) shall otherwise fail to perform any of Owner's covenants, agreements or obligations hereunder within ten (10) days after written notice thereof by Developer to Owner (unless a longer time period is set forth elsewhere in this Agreement), Developer shall have all rights, privileges and remedies to enforce said collection or performance as shall be provided or permitted by law or equity from time to time including, without limitation, the right to invoke any one or more of the following remedies:

a. Institute suit against Owner to enforce collection of the amounts owed to Developer pursuant hereto, together with interest thereon at the highest lawful rate permitted by the laws of the state where the Center is located, court costs and attorneys' fees;

b. Institute suit in equity to the extent permitted by law to compel compliance with the terms and conditions of this Agreement;

c. With respect to the payment of the Access Maintenance Charge, to (i) enforce denial of the use of the Ring Road and Entrance Drives, or other access easement in replacement thereof, against Owner, its tenants, lessees or invitees, and/or (ii) record against title to the Parcels a notice of lien which shall constitute a lien in favor of Developer on the interest of Owner and which may be foreclosed by Developer in proceedings in the nature of a foreclosure, with all of the rights and remedies afforded by the laws of the state where the Parcels are located to secured creditors in such proceedings; provided, however, that any liens shall be subordinate and subject to any bona fide first mortgage, to or held by an unrelated third party, existing upon the Parcels prior to recordation of the notice of lien;

VOL 8630 PG 1624

d. Set-off any such amounts due from Owner to Developer against any amounts due from Developer to Owner; and

e. If no emergency exists, to perform the Owner's omitted obligation after giving the above required notice, and in any emergency situation, to perform the same immediately without notice or delay. Developer, by reason of its doing so, shall not be liable or responsible to Owner or any other person or entity for any losses or damages thereby sustained by Owner or any occupants of the Parcels or of anyone claiming by or under either an occupant or Owner, unless such loss or damage arose from the gross negligence or willful misconduct of Developer, its agents, contractors or employees in performing any such obligation. The reasonable and necessary cost of Developer's performance of such obligation shall be paid by Owner to Developer within ten (10) days after the date of receiving a statement therefor, which statement shall specify the details of the obligation performed and the cost thereof.

f. In the event Owner fails to pay within thirty (30) days after the same is due and payable any sum or charge required to be paid by Owner to Developer under this Agreement, such unpaid amount shall bear interest from the due date thereof to the day of payment at an annual rate equal to the lesser of ten percent (10%) or the highest rate of interest that may lawfully be charged to Owner then required to pay interest under this Agreement. Such interest shall be paid by Owner to Developer at the time of payment of the unpaid principal amount.

All rights, privileges and remedies afforded Developer by this Agreement shall be deemed cumulative and the exercise of any one of such rights, privileges and remedies shall not be deemed to be a waiver of any other right, remedy or privilege set forth herein.

12. WAIVERS

No act, delay or omission by either party in exercising any right or enforcing against the other any term or provision of this Agreement shall impair any such right or be construed or deemed to be a waiver of the same or any other such term or provision. A waiver by either party of any breach of the terms and provisions of this Agreement shall not be construed to be a waiver of any subsequent breach thereof or of any other terms and provisions herein contained.

13. NOTICES

All notices or communications ("Notices") to be given under or pursuant to this Agreement shall be in writing, addressed to the parties at their respective addresses as set forth below, and shall be delivered by U.S. certified mail, postage prepaid, return receipt requested, or reputable, national, pre-paid overnight delivery service for which written evidence of delivery is available.

VOL 8630 PG 1625

If to Developer: Simon Property Group (Texas), L.P.
c/o Simon Property Group
National City Center
115 West Washington Street
Indianapolis, Indiana 46204
ATTN: Peripheral Development Department

If to Owner: Dicker-Warmington Properties and/or Monte Mac No. 2
c/o GVD Commercial Properties, Inc.
1915-A East Katella Avenue
Orange, California 92867
ATTN: Gerald V. Dicker, President

Notices shall be effective (i) three (3) days after deposit in the U.S. mail if delivered by certified mail, or (ii) on the next business day if sent by overnight delivery service. The parties may change their notice addresses from time to time upon written notice to the other and as parties other than the originally named Developer and/or Owner obtain an interest in the Developer's Property or Parcels, respectively, or any portion thereof, subject to the terms and conditions of this Agreement. The transferor Developer or Owner shall advise the other party of the name and address of the party to receive notice as provided herein, provided that until such time as the transferor Developer or Owner notifies the other party of any such transferee party or other change in the address, such other party shall be entitled to continue to rely on the accuracy of the notice address previously in effect.

All charges which are due from Owner to Developer pursuant to any provision of this Agreement may be sent via prepaid first class regular mail delivery, shall be made payable to Developer and shall be directed, together with a copy of the invoice for the period to which it relates, to the address set forth below or at such other address as Developer may subsequently designate by written notice to Owner:

Windsor Park Mall
c/o Simon Property Group (Texas), L.P.
ID# 774523
P.O. Box 2004
Indianapolis, IN 46255

14. MISCELLANEOUS PROVISIONS

a. Governing Law. This Agreement shall be governed and construed under and in accordance with the laws of the state where the Center is located according to its fair meaning and not in favor of or against any party.

b. Severability. If any term, provision or condition contained in this Agreement shall, to any extent, be held to be invalid, illegal or unenforceable in any respect, the remainder

VOL 8630 PG 1626

of this Agreement (or the application of such term, provision or condition to persons or circumstances other than those in respect of which it is invalid, illegal or unenforceable) shall not be affected thereby, and each and every other term, provision and condition of this Agreement (and the application thereof) shall be legal, valid and enforceable to the fullest extent permitted by law.

c. Gender and Number. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, and vice versa, unless the context requires otherwise.

d. Section Heading. The section headings herein are for convenience or reference purposes only and shall not limit or otherwise affect or be used in the construction or interpretation of the terms and provisions of this Agreement or any part hereof.

e. Counterparts. This Agreement may be executed and acknowledged in multiple originals or counterparts, each of which will be an original and, when all of the parties to this Agreement have signed and acknowledged at least one (1) original, such copies together will constitute a fully executed and binding Agreement.

f. Entire Agreement. This Agreement constitutes the sole agreement of the parties hereto and supersedes any prior discussions, understandings or agreements (written or oral) between the parties respecting the within subject matter.

g. Amendment. This Agreement shall not be amended or modified unless such amendment is set forth in writing executed by Developer and Owner.

h. Attorneys Fees. If either party files any action or brings any proceeding against the other arising out of this Agreement, or is made a party to any action or proceeding brought by a third party arising out of this Agreement, then, as between Developer and Owner, the prevailing party shall be entitled to recover, as an element of its costs of suit and not as damages, reasonable attorneys' fees to be fixed by the court. The "prevailing party" shall be the party who is entitled to recover its costs of suit, whether or not the suit proceeds to final judgment. A party not entitled to recover its costs shall not recover attorneys' fees.

i. Binding Effect. Each and all of the covenants, restrictions, conditions and provisions contained in this Agreement, whether of an affirmative or negative nature, (i) are made for the direct and mutual benefit of the Parcels, and Developer's Property, and each and every portion thereof, and will constitute covenants running with the land of the Parcels and Developer's Property; (ii) will bind every owner of all or any portion of the Parcels and Developer's Property to the extent that such portion is affected or bound by the covenants, conditions or restrictions to be performed on the behalf of such portion; and (iii) will inure to the benefit of the parties and their respective successors and assigns.

VOL 8630 PG 1627

j. Conflicts. To the extent of a conflict between either, all or any combination of this Agreement, any applicable Laws, the REA and/or the approved Plans and Specifications, the terms and provisions of either of this Agreement, Laws, the REA and/or the approved Plans and Specifications which impose the most stringent standard shall control. To the extent of a conflict between this Agreement and the Leases with respect to (i) the rights and obligations of the Owner hereunder and the tenants under the Leases or (ii) the obligations of the Developer hereunder and the landlord under the Leases, the terms and provisions of the Lease affecting the Parcel which is subject to the conflict shall control so long as such Lease remains in full force and effect.

k. Allocation Between Owners. All costs, prorations, obligations and burdens on Owner set forth in this Agreement shall be allocated between DWP and MM2, their successors and assigns, as Owner of the Parcel to which such cost, proration, obligation or burden shall be applicable.

15. LIMITATION OF LIABILITY

Anything to the contrary herein contained notwithstanding, there shall be absolutely no personal liability on persons, firms or entities who constitute Developer with respect to any of the terms, covenants, conditions and provisions of this Agreement, and Owner shall, subject to the rights of any first mortgagee, look solely to the interest of Developer, its successors and assigns, in the Center for the satisfaction of each and every remedy of Owner in the event of default by Developer hereunder; such exculpation of personal liability is absolute and without any exception whatsoever. In the event the Developer transfers its interest in Developer's Property, it shall be released from all liability for performance of any covenants, restrictions and conditions on the part of the Developer which is thereafter to be performed hereunder. The transferee shall be deemed to have assumed all of the covenants, restrictions and conditions herein to be observed by the Developer with the result that such covenants, restrictions and conditions shall bind Developer, its successors and assigns, only during and in respect of their respective successive periods of ownership.

16. INDEMNIFICATION AND INSURANCE

a. Indemnification of Developer. Owner shall indemnify, defend, protect and hold harmless Developer, from and against all losses, claims, liabilities, damages, costs and expenses (including, without limitation, reasonable attorney's fees and other costs of litigation) arising out of, related to, caused by or resulting from the death of or any accident, injury (personal or bodily), loss or damage whatsoever, actually or claimed to be suffered or sustained by any person, or to the property of any person (such losses, claims, liabilities, damages, costs and expenses are collectively referred to hereinafter as "Loss"), as shall occur on the Parcels, except to the extent that any such Loss is caused by reason of the gross negligence or willful misconduct of Developer, its agents, contractors or employees.

b. Owner's Commercial General Liability Insurance. Owner shall or shall cause its tenants to at all times maintain in full force and effect commercial general liability insurance

VOL 8630 PG 1628

with a financially responsible insurance company or companies authorized to do business in the state where the Parcels are located, with an AM Best rating of "A-IX" (or the equivalent thereof) or better in each of the previous three (3) years, written on an occurrence basis covering claims of Loss from products and completed operations, contractual liability (including, without limitation, coverage of the indemnities under this Agreement), bodily injury including death, personal injury, and broad-form property damage arising out of incidents or accidents on the Parcels (including the consequential damages from any of the foregoing), with a limit of not less than Three Million Dollars ($3,000,000) per occurrence. Said limits may be provided through a combination of primary and excess (umbrella) liability policies. All insurance shall be primary with respect to the Parcels. The foregoing paragraph shall not expand or require Owner to provide any insurance in excess of such insurance as is required to be maintained by the tenants under the Leases so long as such Leases remain in effect.

c. Owner's All Risk Property Insurance. Owner shall carry all risk property insurance coverage, including builder's risk insurance coverage, in an amount at least equal to the full replacement cost of all Improvements on the Parcels, without deduction for depreciation, insuring against all risks (subject to exclusion of certain risks customarily excluded from time to time in the so-called "all-risk" policy), and insuring specifically against at least the following perils: loss or damage by fire, lighting, windstorm, cyclone, tornado, hail, explosion, earthquake, subsidence, flood, water damage other than floor or sprinkler leakage damage, riot, riot attending a strike, civil commotion, malicious mischief, vandalism, collapse of building or roof, boiler and machinery equipment, aircraft, vehicle and smoke damage and sprinkler leakage. Such insurance shall be carried with a financially responsible insurance company or companies authorized to do business in the state where the Parcels are located with a Best rating of "A-IX" (or the equivalent thereof) or better in each of the previous three (3) years. Such insurance may be carried in whole or in part under a policy or polices covering other liabilities and locations of the Owner, or a subsidiary, successor, affiliate or controlling corporation of such Owner; provided, however, that (A) such policy or policies shall insure the risks and full amount required under this Agreement and (B) the inclusion of additional coverage or risks shall not materially diminish the coverage or insurance proceeds available under said policy or policies.

d. Certificate of Insurance. Owner shall, upon execution of this Agreement and thereafter upon request, furnish a certificate to Developer, evidencing that the insurance referred to herein above is in full force and effect. All policies of insurance carried by Owner, or endorsements issued under any blanket policy or policies covering those liabilities required to be insured against, shall provide that the same may not be canceled or reduced in scope or amount below that required hereunder without at least thirty (30) days' prior written notice being given by the insurer to Developer. The foregoing requirements of this paragraph shall not apply so long as the Leases remain in effect unless provided for as a requirement of the tenants under such Leases.

VOL 8630 PG 1629

17. TAX DIVISION

In the event a Parcel is not a separate parcel, upon the execution and recording of this Agreement, Developer shall diligently proceed to take the necessary steps to cause a division of the larger parcel for real estate tax purposes to affect the separate assessment and taxation of the Parcel. Developer shall file any petition(s) necessary for effectuating such a division, and Owner shall join in such petition(s) if required by law. All costs and expenses, including attorneys' fees of such tax division shall be borne by Developer, except costs and expenses for services rendered by either party's in-house personnel and counsel shall not be included in the costs and expenses payable by Developer. The provisions of this Section 17 and the obligation to affect a separate tax parcel shall remain in effect until satisfied.

18. PLAT OF SUBDIVISION

If required (a) by any Local Authority having jurisdiction over the Parcels or the Center, as a result of the conveyance of the Parcels by Developer to Owner, or (b) by any future purchaser of the Applebee's Parcel or Olive Garden Parcel, or by any future purchaser of any part of Developer's Property ("Future Purchaser"), Owner and Developer shall cooperate in good faith to undertake the platting, replatting, subdivision or similar procedure (the "Platting") covering the Applebee's Parcel, Olive Garden Parcel and/or Developer's Property for which platting is required. Developer and Owner agree to cooperate with each other and execute or join in the execution of any document(s) or other instrument(s) required for such Platting; provided that (i) no interest of either party is prejudiced thereby, (ii) neither party shall incur any extraordinary cost or expense (unless the other party agrees in writing to promptly reimburse the obligated party therefore), and (iii) all costs and expenses, including attorneys' fees and survey costs, of such Platting (so long as reasonable and legitimate in accordance with custom and practice in Bexar County, Texas) shall be shared equally by the parties (except the costs and expenses for services rendered by either party's in-house personnel and counsel shall be paid by the party whose personnel and counsel render such services). Developer and Owner further agree to cooperate in good faith to undertake such Platting as aforesaid if either party elects to commence Platting without being required to do so by any Local Authority or Future Purchaser; provided that in such event the costs and expenses of such Platting shall be borne by the party electing to commence the Platting (except the costs and expenses for services rendered by either party's in-house personnel and counsel shall be paid by the party whose personnel and counsel render such services). The foregoing provisions of this Section 18 shall remain in effect until the Platting of the Applebee's Parcel, Olive Garden Parcel and Developer's Property to reflect the conveyance of the Parcels by Developer to Owner has been completed.

19. NO BUILD AREA

Developer covenants and agrees that no buildings or other improvements, other than surface parking areas at grade level, shall be permitted or maintained within that portion of the Common Areas (as defined herein) adjacent to the Applebee's Parcel and located as shown on the site plan attached hereto as Exhibit C.

VOL 8630 PG 1630

20. RECIPROCAL UTILITY LINE EASEMENT

Developer does hereby create, grant and convey unto Owner, its successors and assigns, in, under, on and through the Developer's Property for the benefit of the Parcels, and Owner does hereby create, grant and convey unto Developer, its successors and assigns, in, under, on and through the Parcels for the benefit of the Developer's Property a perpetual nonexclusive right, privilege and easement, together with such rights of access thereto, thereon and therein, as are reasonably necessary to fully enjoy such easement rights, for the limited purpose of constructing, installing, operating, inspecting, maintaining, repairing and/or replacing such underground general utility facilities and related surface and subsurface appurtenances existing as of the date hereof (the "Reserved Utilities"), and for no other purpose (the "Reserved Utility Easement"). Developer shall retain on behalf of itself, its successors and assigns, with respect to the Developer's Property, and Owner shall retain on behalf of itself, its successors and assigns, with respect to the Parcels, the perpetual right to landscape, pave and make such other uses of the surface of the land subject to the Reserved Utility Easement as are not inconsistent with the Reserved Utility Easement, but not the right to construct or install any permanent structure thereon or thereto which would or might restrict access to the area subject to the Reserved Utility Easement or access to and use of the Reserved Utilities. If the surface and/or subsurface of the area subject to the Reserved Utility Easement (including any improvements located thereon and/or therein which are not permanent structures (e.g., paving, curbs, gutters and the like)) are disturbed by any party entitled to do so pursuant to the provisions hereof, such party shall, in consideration of its use and enjoyment of the Reserved Utility Easement and at its sole cost and expense, promptly restore the surface and/or subsurface thereof (and all such improvements located thereon and/or therein) to the same general condition in which they existed immediately prior to such disturbance.

21. LANDSCAPE AND SIGN EASEMENT TO DEVELOPER

Owner does hereby create, grant and convey unto Developer, its successors and assigns, for the benefit of the Developer's Property, a perpetual, non-exclusive right, privilege and easement in and upon that area described in Exhibit D attached hereto and made a part hereof, for the limited purpose of the maintenance and operation of the existing landscaping and signage, including the lighting thereof, and any replacement of the existing landscaping and signage, and any substitute thereof which does not block visibility to the Parcels, together with such rights of access and rights to provide utilities thereto, thereon and therein as are reasonably necessary to fully enjoy such easement rights, and for no other purpose.

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VOL 8630 PG 1631

IN WITNESS THEREOF, the parties have executed this Agreement as of the day and year first above written.

DEVELOPER: SIMON PROPERTY GROUP (TEXAS), L.P., a Texas limited partnership

By: GOLDEN RING MALL COMPANY LIMITED PARTNERSHIP, an Indiana limited partnership, General Partner

By: SIMON PROPERTY GROUP (DELAWARE), INC., a Delaware corporation, General Partner

By:_____

David Simon,
Chief Executive Officer

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared David Simon, to me personally known as the Chief Executive Officer of SIMON PROPERTY GROUP (DELAWARE), INC., a Delaware corporation, General Partner of GOLDEN RING MALL COMPANY LIMITED PARTNERSHIP, an Indiana limited partnership, General Partner of SIMON PROPERTY GROUP (TEXAS), L.P., a Texas limited partnership, who acknowledged his execution of the foregoing instrument for and on behalf of said corporation by authority of its Board of Directors.

WITNESS my hand and notarial seal this 31st day of October, 2000.

Darlene E. Garvey
Notary Public

NOTARY PUBLIC SEAL INDIANA

DARLENE E. GARVEY
Res. of Johnson Co.
Comm. Exp. 1-18-2008

VOL 6630 PG 1632

OWNER - OLIVE GARDEN PARCEL:

DICKER-WARMINGTON PROPERTIES, a California general partnership
By: GVD, INC., a California corporation, its Managing General Partner

By:_____
David A. Case, Chief Financial Officer

STATE OF CALIFORNIA)
) SS:
COUNTY OF Orange)

Before me, a Notary Public in and for said County and State, personally appeared David A. Case, to me personally known as the Chief Financial Officer of GVD, INC., a California corporation, the Managing General Partner of Dicker-Warmington Properties, a California general partnership, who executed the foregoing instrument for and on behalf of said Corporation, by authority of its Board of Directors, and for and on behalf of said General Partnership.

WITNESS my hand and notarial seal this 27th day of October, 2000.

TRACY FRASZ
COMM. #1230315
NOTARY PUBLIC - CALIFORNIA
ORANGE COUNTY
My Comm. Exp. July 28, 2003

Tracy Frasz
Notary Public

VOL 8630 PG 1633

OWNER - APPLEBEE'S AND WENDY'S PARCEL:

MONTE MAC NO. 2, a California limited partnership
By: GVD INVESTMENTS, INC., a California corporation, its General Partner

By:_____
David A. Case, Chief Financial Officer

STATE OF CALIFORNIA)
) SS:
COUNTY OF Orange)

Before me, a Notary Public in and for said County and State, personally appeared David A. Case, to me personally known as the Chief Financial Officer of GVD Investments, Inc., a California corporation, as the general partner of MONTE MAC NO. 2, a California limited partnership, who executed the foregoing instrument for and on behalf of said Corporation, by authority of its Board of Directors, and for and on behalf of said limited partnership.

WITNESS my hand and notarial seal this 27th day of October, 2000.

TRACY FRASZ
COMM. #1230315
NOTARY PUBLIC - CALIFORNIA
ORANGE COUNTY
My Comm. Exp. July 29, 2003

Tracy Frasz
Notary Public

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LIST OF EXHIBITS

Exhibit A	Legal Description of Developer's Property
Exhibit B-1	Legal Description of the Applebee's Parcel
Exhibit B-2	Legal Description of the Olive Garden Parcel
Exhibit B-3	Legal Description of the Wendy's Parcel
Exhibit C	Site Plan of the Center
Exhibit D	Legal Description of Landscape and Sign Easement

OL8630 PG1635

EXHIBIT A TO COVENANTS, CONDITIONS AND RESTRICTIONS AGREEMENT

Legal Description of Developer's Parcel

24.313 acres (1,059,095 square feet) of land out of Lot 26, NCB 12190, Simon Subdivision, City of San Antonio, Bexar County, Texas as recorded in Volume 9522, Pages 105-106 in the Deed and Plat Records of Bexar County, Texas, said 24.313 acres of land being more particularly described as follows, to wit:

Beginning:	at a 5/8" iron rod found on the east right-of-way line of IH-35 for the southwest corner of said Lot 26;
Thence:	N 10° 11' 06" E, 437.54 feet with the west line of said Lot 26 and the east right-of-way line of IH-35 to a found nail with cap for the northwest corner of the herein described tract;
Thence:	S 08° 04' 27" E, 217.14 feet to an iron pin set;
Thence:	N 10° 17' 32" E, 147.34 feet to an iron pin set;
Thence:	N 79° 48' 54" W, 22.35 feet to an iron pin set;
Thence:	N 10° 11' 06" E, 9.01 feet to an iron pin set;
Thence:	N 79° 51' 43" W, 195.09 feet to an iron pin set;
Thence:	N 10° 11' 06" E, 64.40 feet along the east right-of-way line of IH-35 to an iron pin set;
Thence:	S 79° 48' 54" E, 225.00 feet to an iron pin set;
Thence:	N 10° 11' 06" E, 230.00 feet to an iron pin set;
Thence:	S 79° 48' 54" E, 38.00 feet with the north line of said Lot 26 to a found nail with cap;
Thence:	S 11° 47' 28" W, 529.53 feet with the east line of said Lot 26 to a found nail with cap;
Thence:	with the northerly line of said Lot 26 as follows: S 58° 30' 00" E, 68.00 feet to a found nail with cap; N 90° 00' 00" E, 245.15 feet to a found nail with cap; S 00° 00' 00" E, 34.92 feet to a found iron pin; N 90° 00' 00" E, 138.60 feet to a found nail with cap; S 00° 00' 00" E, 25.00 feet to a found nail with cap; N 90° 00' 00" E, 209.40 feet to a found nail with cap for an interior corner of the herein described tract;
Thence:	N 00° 00' 00" E, 558.00 feet with the west line of said Lot 26 to an exterior building corner;
Thence:	N 90° 00' 00" E, 493.68 feet with the north line of said Lot 26 and the south line of said Lot 25 to an interior building corner;
Thence:	N 00° 00' 00" E, 206.00 feet with the west line of said Lot 26 to an interior building corner;
Thence:	N 90° 00' 00" W, 181.21 feet with south line of said Lot 26 to a found iron pin;
Thence:	N 00 ° 00' 00" W, 557.43 feet with the west line of said Lot 26 to a found iron pin;

VOL 8630 PG 1636

Thence: N 90° 00' 00" W, 24.92 feet with the south line of said Lot 26 to a found iron pin;

Thence: N 00° 00' 00" E, 149.77 feet with the west line of said Lot 26 to a found iron pin in the south line of Walzem road;

Thence: with the south line of Walzem road as follows:
S 88° 12' 41" E, 121.74 feet to a highway monument found;
S 89 ° 59.' 55" E, 38.00 feet to the northeast corner of said Lot 26 to a found iron pin;

Thence: with the east line of said Lot 26 as follows:
S 00° 00' 00" W, 64.40 feet to a found iron pin;
S 60° 00' 00" W, 78.00 feet to a found iron pin;
S 00° 00' 00" E, 500.00 feet to a found nail with cap;

Thence: S 90° 00' 00" E, 465.00 feet with the north line of said Lot 26 to a found "X" in concrete;

Thence: S 00° 00' 00" E, 108.89 feet with the east line of said Lot 26 to a found nail with cap;

Thence: N 90° 00' 00" E, 165.90 feet with the north line of said Lot 26 to a found nail with cap;

Thence: S 00° 00' 00" E, 232.00 feet with the east line of said Lot 26 to a found "X" in concrete;

Thence: N 90° 00' 00" W, 165.90 feet with the south line of said Lot 26 to a found iron pin;

Thence: S 00° 00' 00" E, 49.11 feet with the east line of said Lot 26 to a found nail with cap;

Thence: N 90° 00' 00" W, 234.68 feet with the south line of said Lot 26 to an interior building corner;

Thence: with the easterly line of said Lot 26 as follows:
S 56° 18' 36" W, 86.53 feet to an interior building corner;
S 00° 00' 00" W, 209.00 feet to an interior building corner;
N 90° 00' 00" E, 107.00 feet to an exterior building corner;
S 00° 00' 00" W, 118.00 feet to a found "X" in concrete;
S 90° 00' 00" E, 30.00 feet to a found "X'" in concrete;
S 00° 00' 00" W, 228.72 feet to a found nail with cap;

Thence: N 89° 46' 08" E, 605.93 feet with the north line of said Lot 26 to a found iron pin;

Thence: S 00° 10' 54" E, 62.48 feet with the east line of said Lot 26 to a found iron pin;

Thence: S 89° 49' 10" W, 40.00 feet with the south line of said Lot 26 to a found iron pin;

Thence: S 00° 10' 54" E, 16.03 feet with the east line of said Lot 26 to a found iron pin;

Thence: S 89° 46' 08"W, 2200.19 feet along the south line of said Lot 26 to the POINT OF BEGINNING, containing 24.313 acres (1,059,095 square feet) of land, more or less.

0L8630 PG1637

EXHIBIT B-1 TO COVENANTS, CONDITIONS AND RESTRICTIONS AGREEMENT

Legal Description of the Applebee's Parcel

A 0.777 acre (33,864 square feet) tract of land out of Lot 26, N.C.B. 12190, Simon Subdivision, situated in the City of San Antonio, Bexar County, Texas, as recorded in Volume 9522, Page 105 - 106, of the Deed and Plat Records of Bexar County, Texas, and being more particularly described as follows to wit:

Commencing:	at a found iron pin in the east right-of-way of I.H. 35 at the southwest corner of the above referenced Lot 26;
Thence:	N 10° 11' 06" E, 437.54 feet along the east right-of-way of I.H. 35 to an iron pin set and the POINT OF BEGINNING of this tract;
Thence:	N 10° 11' 06" E, 157.17 feet along the east right-of-way of I.H. 35 to an iron pin set;
Thence:	S 79° 51' 43" E, 195.09 feet to an iron pin set;
Thence:	S 10° 11' 06" W, 9.01 feet to an iron pin set;
Thence:	S 79° 48' 54" E, 22.35 feet to an iron pin set;
Thence:	S 10° 17' 32" W, 147.34 feet to an iron pin set;
Thence:	N 80° 04' 27" W, 217.14 feet to the POINT OF BEGINNING and containing 0.777 acres (33,864 square feet) of land, more or less.

70 8630 PG 1638

EXHIBIT B-2 TO COVENANTS, CONDITIONS AND RESTRICTIONS AGREEMENT

Legal Description of the Olive Garden Parcel

Field notes of a 1.188 acre tract of land (51,750 square feet) situated in the City of San Antonio, Bexar County, Texas, being out of a portion of Lot 26, New City Block 12190, Simon Subdivision, according to plat recorded in Volume 9506, Pages 204-206, Plat Records of Bexar County, Texas, and being more particularly described by metes and bounds as follows:

Beginning at an iron pin found in the east right-of-way line of Interstate Highway 35, at a northwest corner of said Lot 26 and this tract, and being S 10° 11' 06" W 703.41 feet along said right-of-way line from its cutoff at Walzem Road.

Thence S 79° 48' 54" E 225.00 feet along the north line of Lot 26 and this tract to an iron pin set for the northeast corner of this tract.

Thence S 10° 11' 06" W 230.00 feet along the east line of this tract to an iron pin set for its southeast corner.

Thence N 79° 48' 54" W 225.00 feet along the south line of this tract to an iron pin set in the east right-of-way line of Interstate Highway 35 for the southwest corner of this tract.

Thence N 10° 11' 06" E 230.00 feet along the east right-of-way line of Interstate Highway 35 to the point of beginning and containing 1.188 acres of land (51,750 square feet), more or less, according to a survey on the ground on September 26, 2000, by Vickrey & Associates, Inc.

10L8630 PG 1639

EXHIBIT B-3 TO COVENANTS, CONDITIONS AND RESTRICTIONS AGREEMENT

Legal Description of the Wendy's Parcel

0.544 acres (23,675 square feet) of land consisting of all of Lot 39, NCB 12190, City of San Antonio, Bexar County, Texas as recorded of Volume 9522, Pages 107-108 in the Deed and Plat Records of Bexar County, Texas.

VOL 8630 PG 1640

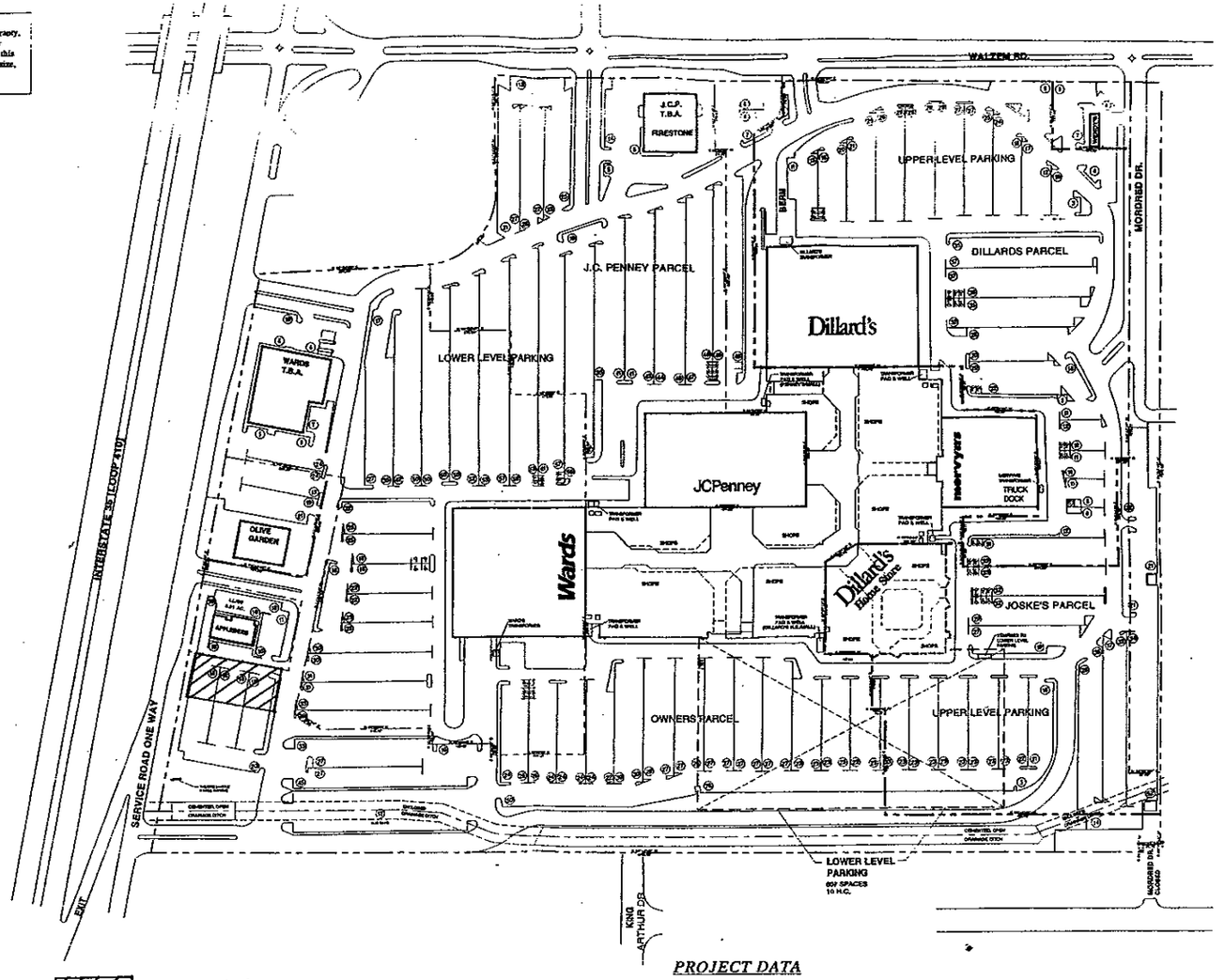
EXHIBIT C TO COVENANTS, CONDITIONS AND RESTRICTIONS AGREEMENT

Site Plan of the Center

(See attached Site Plan modified August 14, 2000)

OL8630 PG1641

This exhibit is provided for illustrative purposes only, and shall not be deemed to be a warranty, representation or agreement by Landlord that the Center, Common Areas, buildings and/or stores will be as illustrated on this exhibit, or that any tenants which may be referenced on this exhibit will at any time be occupants of the Center. Landlord reserves the right to modify size, configuration and occupants of the Center at any time.



- No Build Area

MALL COMMON AREA
INDICATES LOWER LEVEL MALL COMMON AREA
INDICATES UPPER LEVEL MALL COMMON AREA

Site Plan

0 125 250

Modified: August 14, 2000

PROJECT DATA

MONTGOMERY WARDS	174,241
JCPENNEY	165,432
DILLARD'S	180,049
MERVYNS	81,840
DILLARD'S HOME STORE	66,579
TOTAL DEPARTMENT STORE GLA	668,141
Level 01	181,969
Level 02	204,101
TOTAL SMALL SHOPS GLA	386,070
TOTAL GLA	1,054,211

TOTAL AMOUNT OF PARKING: 4856
PARKING RATIO: 4.58

Exhibit C to Covenants, Conditions and Restrictions Agreement

Windsor Park Mall
7900 I.H. 35, North
San Antonio, TX 78218
CORP # 4523

SIMON PROPERTY GROUP

00186930 R16142

EXHIBIT D TO COVENANTS, CONDITIONS AND RESTRICTIONS AGREEMENT

Legal Description of Landscape and Sign Easement

A 0.005 acre (213 square feet) tract of land out of Lot 26, N.C.B. 12190, Simon Subdivision, situated in the City of San Antonio, Bexar County, Texas, as recorded in Volume 9522, Page 105-106, of the Deed and Plat Records of Bexar County, Texas, and being more particularly described as follows:

Commencing: at a found iron pin in the east right-of-way of I.H. 35 at the southwest corner of the above referenced Lot 26;

Thence: N 10° 11' 06" E, 437.54 feet along the east right-of-way of I.H. 35 to an iron pin set;

Thence: N 10° 11' 06" E, 157.17 feet along the east right-of-way of I.H. 35 to an iron pin set;

Thence: S 79° 51' 43" E, 195.09 feet to an iron pin set and the POINT OF BEGINNING of this tract;

Thence: S 79° 51' 43" E, 200 feet to an iron pin set;

Thence: S 10° 11' 06" W, 9.01 feet to an iron pin set;

Thence: S 79° 48' 54" E, 22.35 feet to an iron pin set;

Thence: S 10° 17' 32" W, 8.00 feet to an iron pin set;

Thence: N 79° 48' 54" W, 24.35 feet to the southwest corner of this tract;

Thence: N 10° 11' 06" E, 17.01 feet to the POINT OF BEGINNING and containing 0.005 acres (213 square feet) of land, more or less.

08630 PG 1643

CONSENT AND SUBORDINATION

The undersigned, Teachers Insurance and Annuity Association of America ("Lender") is currently the holder of the beneficial interest of the beneficiary under: (i) a Deed of Trust dated April 28, 1977, executed, acknowledged and delivered by the predecessor in interest of Simon Property Group (Texas), L.P. ("Borrower"), recorded on April 28, 1977 as Instrument No. 764749 in Book 8140, Page 463, Real Property Records of Bexar County, Texas (as amended, the "**First Deed of Trust**"), covering certain real property in the County of Bexar and State of Texas, as therein more particularly described (the "**Premises**"); (ii) an Assignment of Lessor's Interest in Lease(s) dated April 28, 1977 heretofore made, executed and delivered by Borrower's predecessor in interest, recorded on April 28, 1977 as Instrument No. 764750, Volume 8069, Page 726 in the Real Property Records of Bexar County, Texas (as amended, the "**First Assignment**"); (iii) a Deed of Trust, Security Agreement and Assignment of Rents and Leases dated May 15, 1990, executed, acknowledged and delivered by Borrower's predecessor in interest, recorded on May 17, 1990 as Instrument No. 1920413 in Book 4820, Page 2065, Real Property Records of Bexar County, Texas (as amended, the "**Second Deed of Trust**"), covering the Premises; and (iv) an Assignment of Leases and Rents dated May 15, 1990 made, executed and delivered by Borrower's predecessor in interest, recorded on May 17, 1990 as Instrument No. 1920414, in the Real Property Records of Bexar County, Texas (as amended, the "**Second Assignment**"). The First Deed of Trust and the Second Deed of Trust are collectively referred to herein as the "**Deed of Trust**". The First Assignment and the Second Assignment are collectively referred to herein as the "**Assignment**".

Lender, on the terms and conditions stated in this Consent and Subordination, hereby agrees, for itself and its successors and assigns, on the terms and conditions stated herein, that the interests of Lender under the Deed of Trust and Assignment in and to the Premises granted thereunder are and shall be subject and subordinate to the Covenants, Conditions and Restrictions Agreement (Applebee's, Olive Garden and Wendy's Outlots - Windsor Park Mall) of even date herewith between Dicker-Warmington Properties, Monte Mac No. 2 and Borrower (the "**CC&Rs**"), to which this Consent and Subordination is attached. This Consent and Subordination shall not apply to any future modification or amendment to the CC&Rs unless such modification or amendment has been approved in writing by Lender.

TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA, a New York corporation,

KSB By: Marita K Hornby

Name: MARITA K HORNBY

Title: DIRECTOR

0016630 0016444

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

On the 31st day of October, 2000, before me, the undersigned, a Notary Public in and for said State, personally appeared Marita Hornby, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Maria A. McHugh
Notary Public

MARIA A. MCHUGH
Notary Public, State of New York
No. 01MC5083440
Qualified in Nassau County
Commission Expires Aug. 11, 20 01

08630 PG 1645

Any provision herein which restricts the sale, or use of the described real property because of race is invalid and unenforceable under Federal law
STATE OF TEXAS, COUNTY OF BEXAR
I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me and was duly RECORDED in the Official Public Record of Real Property of Bexar County, Texas on:

NOV 0 6 2000

COUNTY CLERK BEXAR COUNTY, TEXAS

RECORDER'S MEMORANDUM
AT THE TIME OF RECORDATION, THIS INSTRUMENT WAS FOUND TO BE INADEQUATE FOR THE BEST PHOTOGRAPHIC REPRODUCTION BECAUSE OF ILLEGIBILITY, CARBON OR PHOTO COPY, DISCOLORED PAPER, ETC

Filed for Record in:
BEXAR COUNTY, TX
GERRY RICKHOFF, COUNTY CLERK

On Nov 03 2000
At 3:46pm

Receipt #: 383475
Recording: 75.00
Doc/Mgmt : 6.00
Doc/Num : 2000- 0188798
Deputy -Martha Salame

VOL 8630 PG 1646

ACCESS EASEMENT AGREEMENT

This Access Easement Agreement (this "**Agreement**") is made and entered into effective as of the ____ day of _____, 2012 (the "**Effective Date**"), by and between (i) RACKSPACE US, INC., a Delaware corporation ("**Rackspace**"), and ANTHON MINOR, LTD., a Texas limited partnership ("**Anthon Minor**"); and consented to by WINDCREST ECONOMIC DEVELOPMENT CORPORATION ("**Windcrest**").

ARTICLE 1.

Recitals

1.1 **Rackspace Parcel**. Windcrest is the Owner of certain real property in the City of Windcrest, Bexar County, Texas, more particularly described on **Exhibit A** attached hereto (the "**Rackspace Parcel**") and Rackspace is the ground lessee thereof.

1.2 **Anthon Minor Parcel**. Anthon Minor is the Owner of certain real property in the City of Windcrest, Bexar County, Texas adjacent to the Rackspace Parcel, more particularly described on **Exhibit B** attached hereto (the "**Anthon Minor Parcel**").

1.3 **Access Easement**. The Owner of the Rackspace Parcel and the Owner of the Anthon Minor Parcel desire to subject a portion of the Rackspace Parcel defined herein as the "Access Tract" to a certain limited and specifically described easement for access set forth hereinbelow, subject to which the Access Tract shall be held, improved and conveyed, for the benefit of the Anthon Minor Parcel, as more particularly set forth herein.

NOW, THEREFORE, in consideration of the premises, the sum of Ten and No/100 Dollars ($10.00), and other good and valuable consideration in hand paid, and in consideration of the mutual agreements herein made, the receipt and sufficiency of which are hereby acknowledged, the undersigned hereby agree as follows:

ARTICLE 2.

Definitions

2.1 **Access Tract**. That certain portion of the Rackspace Parcel depicted on the Site Plan as the "Proposed Access Easement".

2.2. **Access Road**. That certain publicly dedicated road to be constructed on the Rackspace Parcel, in the location depicted on the Site Plan as the "Windsor Parkway", as the same exists from time to time and as modified from time to time.

2.3 **Occupant**: Any Person, from time to time, entitled to the use and occupancy of any portion of the Property under any lease, sublease, license, concession or other similar agreement.

2.3 **Owner**: The owner of any portion of the Property, its successor or assigns. For purposes hereof, Rackspace, as the ground lessee of the Rackspace Parcel under the Rackspace Lease shall be deemed an Owner of the Rackspace Parcel.

2.4 **Parcel**. Any of the Rackspace Parcel or the Anthon Minor Parcel.

2.7 **Party**. Each of Rackspace and Anthon Minor.

2.8 **Permittee**: All Owners, Occupants and the partners, officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees and licensees of Owners and Occupants.

2.9 **Person**: Individuals, partnerships, firms, associations, corporations, trusts, governmental agencies, administrative tribunals or any other form of business or legal entity.

2.10 **Property**. The Rackspace Parcel and the Anthon Minor Parcel, collectively.

2.11 **Rackspace Lease**. That certain Ground Lease Agreement dated August 2, 2007, as amended from time to time, by and between Windcrest Economic Development Corporation, on behalf of the City of Windcrest, as landlord, and Rackspace, as tenant.

2.11 **Site Plan**. That certain drawing of the Property attached hereto as **Exhibit C** and made a part hereof.

ARTICLE 3.

Access Easement

3.1 **Grant of Access Easement**. The Owner of the Rackspace Parcel, as the Owner of the Access Tract, does hereby GRANT, SELL and CONVEY unto the Owner of the Anthon Minor Parcel for the benefit of the Owner of the Anthon Minor Parcel and its respective Occupants and Permittees, a perpetual, non-exclusive e asement, appurtenant to the Anthon Minor Parcel, for ingress and egress by vehicular and pedestrian traffic from the Anthon Minor Parcel across the Access Tract to the curb cut connecting into the Access Road, in the location depicted upon the Site Plan as "Proposed Access Easement" as the same exists from time to time, subject to the requirements of applicable law and the terms, provisions and conditions hereof (the "**Access Easement**"). The curb cut connecting into the Access Road, in the location depicted upon the Site Plan, shall not be modified, without the prior written consent of the Owner of the Rackspace Parcel.

3.2 **Limitations on Access Easement**. Nothing contained in this Agreement shall be construed as granting to the Owner of the Anthon Minor Parcel and/or its Occupants and Permittees (i) any right to park upon the Access Tract, any other portion of the Rackspace Parcel or any other property; (ii) any right to access any other portion of the Rackspace Parcel or any other property, other than the Access Tract and the Access Road (via the curb cut specified above), subject to the terms, provisions and conditions hereof; (iii) the right to construct

buildings or any other improvements on the Access Tract (except as specifically provided in Section 3.3 below) or any other property.

Notwithstanding anything contained herein to the contrary, the Owner of the Anthon Minor Parcel acknowledges and agrees that, until such time as the Access Road is constructed and dedicated for public use as a public street and the curbs cut thereto is approved by the applicable governmental authorities and constructed, no Owner, Occupant or Permittee of the Anthon Minor Parcel shall have any rights of access to the Access Tract, the Access Road or any portion of the Rackspace Parcel. In addition, the Owner of the Anthon Minor Parcel acknowledges and agrees that the exact location of the Access Road and curb cut thereto remains subject to the approval of all applicable governmental authorities and may be modified at any time as required by the applicable governmental authorities and/or applicable law. In the event the location of the Access Road and/or curb cut thereto is materially modified from the locations depicted on the Site Plan, the parties hereto shall record an addendum to this Agreement in the Real Property Records of Bexar County, Texas confirming such locations.

3.3 **Construction of the Access Road and Curb Cut**. Windcrest shall construct, or cause to be constructed, the following improvements, in accordance with the Rackspace Lease and its other agreements with Rackspace:

(i) The Access Road, a publicly dedicated street in the City of Windcrest, Texas, in approximately the location depicted on the Site Plan;

(ii) The curb cut connecting the Access Tract to the Access Road, in approximately the location depicted on the Site Plan;

(iii) The curb cut connecting the Anthon Minor Parcel to the Access Tract, in approximately the location depicted on the Site Plan.

The Owner of the Anthon Minor Parcel shall be responsible for construction, at its sole cost and expense, of any roadway or other facility to connect the Anthon Minor Parcel through the Access Tract to the Access Road. Additionally, the Owner of the Anthon Minor Parcel shall have the right to construct and install (i) drive surface improvements to cross the Access Easement, (ii) landscaping on the Anthon Minor Parcel adjacent to the Access Road, and (iii) a low profile monument sign not higher than eight (8) feet on the Anthon Minor Parcel adjacent to the Access Road; provided, however, that the plans and specifications for such monument sign, including, but not limited to, the design, height, and size thereof shall be subject to the prior written approval of the Owner of the Rackspace Parcel, such approval not to be unreasonably withheld, conditioned or delayed.

3.4 **Easement for Pre-Existing Utilities**. The Owner of each Parcel within the Property does hereby GRANT, SELL and CONVEY to each other Owner of each Parcel within the Property, for the benefit of each such Owner and its respective Occupants and Permittees, a non-exclusive easement, appurtenant to each Parcel within the Property, for the maintenance and operation of any utility lines that currently exist on any Parcel within the Property and serve another Parcel within the Property as of the date of this Agreement (if any).

3.5 **Permitted Exceptions**. The easements described herein are conveyed and reserved subject to any and all other restrictions, easements, utility lines, or other matters or easements affecting the Property (collectively, the "Permitted Exceptions"). Any mortgage loans or deeds of trust now or hereafter obtained by either party secured in whole or in part by any portion of the Property shall be subordinate to this Agreement. Further, the Owner of the Anthon Minor Parcel acknowledges and agrees that the Access Tract is a "no build area" pursuant to that certain Agreement Regarding Reciprocal Easements, Restrictions, Covenants and Conditions and Memorandum of Purchase Option between Rackspace and The NFP Partnership, a _____ limited partnership, recorded in the real property records of Bexar County, Texas substantially contemporaneous herewith, which shall also be a "Permitted Exception" for all purposes hereunder.

3.6 **Retention of Ownership**. Windcrest and Rackspace herein retain, reserve and shall continue to enjoy fee simple ownership and leasehold ownership, as applicable, and the surface and subsurface, of its dominant, fee and leasehold estate, as applicable, in the Access Tract, including easement areas, for any and all purposes which do not unreasonably interfere with and prevent the use of the Access Easement, and for the benefit of itself, and its respective successors and assigns, the right to use the surface and subsurface of such portions of the Access Tract, including easement areas, as may be necessary for the installation, operation, maintenance, repair, replacement, removal and relocation of underground storm sewer lines, sanitary sewer pipes, water and gas mains, electric power lines, telephone and cable T.V. lines, and other like uses which do not unreasonably interfere with and prevent the use of the Access Easement as contemplated herein.

ARTICLE 4.

Maintenance and Repair.

4.1 **Maintenance and Repair of the Access Road**. The Owner of the Rackspace Parcel shall maintain and repair, at its sole cost and expense, the Access Road, so as to keep improved portions of the Access Road, as may exist from time-to-time, at all times in a safe, sightly, good and functional condition to the same standard as the driveways on the remainder of the Rackspace Parcel; provided, however, that (i) nothing contained herein shall be deemed to obligate the Owner of the Rackspace Parcel to construct any new improvements on the Rackspace Parcel and/or redevelop the Rackspace Parcel (or any portion thereof); and (ii) the Owner of the Rackspace Parcel may dedicate the Access Road to the City of Windcrest or other applicable governmental entity, whereupon such maintenance and repair obligations shall be transferred to the appropriate governmental entity.

The Owner of the Anthon Minor Parcel shall maintain and repair, at its sole cost and expense, the Access Tract, so as to keep improved portions of the Access Tract, as may exist from time-to-time, at all times in a safe, sightly, good and functional condition to the same standard as the driveways on the remainder of the Anthon Minor Parcel.

ARTICLE 5.

Insurance and Indemnity

5.1 **Insurance**. The Owner of the Anthon Minor Parcel shall maintain, or cause to be maintained public liability insurance insuring against claims on account of lost life, bodily injury or property damage that may arise from, or be occasioned by the condition, it use or occupancy of the Access Tract and the Access Easement granted herein, or caused by such Owner, its Occupants, and the respective Permittees of such Owner and Occupant or caused by those persons for whose acts and omissions such Owner, its Occupants, and their respective Permittees are legally liable. The Owner of the Anthon Minor Parcel shall obtain insurance policies, according to the provisions hereof, covering the Access Tract and the Access Easement granted herein from a reputable insurance company or companies qualified to do business in the State of Texas; and each such policy of insurance shall have limits for loss of life or bodily injury in amounts of not less than $1,000,000.00 for each person and $1,000,000.00 for each occurrence and $1,000,000.00 for property damage for each occurrence. Such insurance may be carried under a "blanket" policy or "blanket" policies covering other properties of each respective party, and may be subject to such self-insured retentions as a Party may desire. The Owner of the Anthon Minor Parcel shall, upon written request from the Owner of the Rackspace Parcel, furnish to the Owner of the Rackspace Parcel one or more certificates of insurance evidencing the existence of the insurance required above.

ARTICLE 6.

Remedies

6.1 **Self Help and Other Remedies**. If any Party defaults in the performance of its obligations hereunder and the default is not cured within thirty (30) days following delivery of written notice to such defaulting party then the non-defaulting Party shall have the right to (i) perform such obligation on behalf of the defaulting Party, in which event such defaulting Party shall reimburse such non-defaulting party for all amounts expended by the non-defaulting party on behalf of the defaulting Party, together with interest thereon at the lesser of twelve percent (12%) per annum, or the maximum amount permitted by law from the date the amounts are expended until the date repaid; and/or (ii) exercise any other rights or remedies available to the non-defaulting Party either at law or in equity. In the event of a default by the Owner of the Anthon Minor Parcel in its performance of its obligations hereunder, the Owner of the Rackspace Parcel shall have the right to cut off such Party's access to the Access Road and/or the applicable Access Tract by erecting a fence or other barrier along the common boundary of the Rackspace Parcel and the Anthon Minor Parcel.

6.2 **Injunctive Relief**. In the event of a breach by any party hereto of any obligation of such party under this Agreement, the non-defaulting Party shall be entitled to injunctive relief mandating compliance herewith, and shall be entitled to obtain a decree specifically enforcing the performance of the obligations created hereunder. The undersigned hereby acknowledge and stipulate the inadequacy of legal remedies and irreparable harm which would be caused by the breach of this Agreement, and such non-defaulting party shall be entitled to relief by any and all other available legal and equitable remedies from the consequences of such breach. Any costs and

expenses of any such proceeding, including reasonable attorney's fees, shall be paid by the defaulting party.

6.3 **Non-Waiver**. No delay or omission of any party hereto in the exercise of any rights created hereunder shall impair such right, or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of an event of default hereunder. A waiver by any party hereto of a breach of, or default in, any of the terms and conditions of this Agreement by the other party shall not be construed to be a waiver of any subsequent breach thereof or of any other provision of this Agreement. Except as otherwise specifically provided in this Agreement, no remedy provided in this Agreement shall be exclusive, but instead all remedies shall be cumulative with all other remedies provided for in this Agreement and all other remedies at law or in equity which are available to the parties hereto.

ARTICLE 7.

Notices

7.1 **Notices**. All notices, demands, statements, and requests (collectively the "Notice") required or permitted to be given under this Agreement must be in writing and shall be deemed to have been properly given or served as of the date hereinafter specified: (i) on the date of personal service upon the Party to whom the notice is addressed or if such Party is not available the date such notice is left at the address of the Party to whom it is directed, (ii) on the date the notice is postmarked by the United States Post Office, provided it is sent prepaid, registered or certified mail, return receipt request, and (iii) on the date the notice is delivered by a courier services (including Federal Express, Express Mail, Lone Star or similar operation) to the address of the Party to whom it is directed, provided it is sent prepaid, return receipt requested. The address of the signatories to this Agreement is set forth below:

If to Rackspace:	Rackspace Hosting Attn: General Counsel 5000 Walzem San Antonio, Texas 78218 Telephone No.: 210-312-4700 Fax No.: 210-312-4848
With a copy to:	Steve Golden Golden Steves Cohen & Gordon, LLP 300 Convent Street, Suite 2600 San Antonio, Texas 78205 Telephone No.: (210) 745 3700 Fax No.: (210) 745 3737
If to Anthon Minor:	Anthon Minor, Ltd. 192 E. Zink St. New Braunfels, Texas 78130

Attn: Ted Alexander
Telephone No.: (210) 347-9326
Fax No.: _____

ARTICLE 8.

General Provisions

8.1 **Binding Effect**. The Parties hereby agree that (i) the terms, provisions and conditions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective Permittees, as well as the successors and assigns of such Persons; and (ii) the easements and restrictive covenants shall be appurtenant to and for the benefit of all the Owners and their successors and assigns and shall run with the land for the time periods specified herein. This Agreement shall be construed in accordance with the laws of the State of Texas and all obligations hereunder are performable in Bexar County, Texas. This Agreement and the rights, obligations and duties hereunder shall be fully assignable by Rackspace to any assignee or sublessee under the Rackspace Lease.

8.2 **Partial Invalidity**. If any term, covenant or condition of this Agreement or the application of it to any Person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant or condition to Persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and shall be enforced to the extent permitted by law.

8.3 **Captions**. The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants or conditions contained herein.

8.4 **Gender**. In construing the provisions of this Agreement and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

8.5 **Relationship of the Parties**. Nothing contained herein shall be construed to make the parties hereto partners or joint venturers, or render any of such parties liable for the debts or obligations of the other party hereto.

8.6 **Amendment**. This Agreement may be canceled, changed, modified or amended in whole or in part only by the written and recorded agreement of Parties hereto, or their respective successors and assigns. In no event shall any amendment of this Agreement ever require the consent or joinder of any one or more of the agents, patrons, customers, employees, licensees or invitees of the Property.

8.7 **Term**. This Agreement and the easements, rights, obligations and liabilities created hereby shall encumber the Property in perpetuity or such lesser period if and to the extent a lesser period is required by applicable law, unless all Owners and any parties owning at that

time any security interest in any of the Parcels execute and record in the Bexar County, Texas, real estate records at any time a statement terminating this Agreement.

8.8 **No Dedication**. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property to the general public or for the general public or for any public purpose whatsoever, it being the intention that this Agreement shall be strictly limited to and for the purposes herein expressed. This Agreement is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not specifically benefited by the terms and provisions hereof, nor are any easement rights granted to a party hereunder assignable to any third party.

Notwithstanding the foregoing, nothing contained in this Agreement shall prohibit the Owner of the Rackspace Parcel, its successors or assigns from dedicating or transferring, as applicable, all or any part of the easement areas on the Rackspace Parcel, including, without limitation, the Access Road, to (i) an appropriate governmental entity, the effect of which would create a public street on the easement areas so dedicated, with maintenance and repair responsibilities transferring to the appropriate governmental entity, or (ii) a property owner's association, with maintenance and repair responsibilities transferring to the property owner's association.

8.8 **Counterparts**. This Agreement may be executed in any number of counterparts and each such counterpart hereof shall be deemed to be an original instrument, but all of such counterparts shall constitute but one Agreement.

8.10 **Attorneys Fees**. In the event any legal action or proceeding for the enforcement of any right or obligations herein contained is commenced, the prevailing party in such action or proceeding shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

[Separate Signature Pages Follow]

ANTHON MINOR, LTD.,
a Texas limited partnership

By: Anthon Minor, G.P., LLC,
a Texas limited liability company,
its General Partner

By: _____
Name: _____
Title: _____

STATE OF TEXAS §
§
COUNTY OF BEXAR §

This instrument was acknowledged before me the ___ day of _____, 2012, by _____, the _____ of Anthon Minor, G.P., LLC, a Texas limited liability company, the General Partner of Anthon Minor, Ltd., a Texas limited partnership, on behalf of said limited liability company and said limited partnership.

_____
Notary Public, in and for
The State of _____

After recording return to:

Smita Bhakta
Golden Steves Cohen & Gordon, LLP
300 Convent Street, Suite 2600
San Antonio, Texas 78205

Joinder of Mortgagee

The Wells Fargo Bank, NA ("Lienholder"), is the owner and holder of indebtedness that is secured in whole or in part by liens and security interests (the "Liens") that encumber the Anthon Minor Parcel. Lienholder, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agrees to and does hereby consent to this Access Easement Agreement (the "Agreement") and agrees that a foreclosure of the Liens will not extinguish or diminish any of the easements set forth in said Agreement. Lienholder further agrees to and does hereby subordinate and make secondary and inferior, the Liens to the Agreement, provided, however, (i) the joinder of Lienholder hereto shall not in any way affect, release, diminish, impair or waive any such Liens except and only to the extent expressly and specifically stated above, and (ii) in the event of any foreclosure of the Liens, the purchaser at the sale at foreclosure (including Lienholder, if applicable) and such purchaser's heirs, executors, administrators, successors and assigns will be bound by the Agreement and will be entitled to any and all benefits of the Agreement now or hereafter accruing to any of the parties.

LIENHOLDER:

Wells Fargo Bank, NA

By: _____
Name: _____
Title: _____

THE STATE OF TEXAS §
§
COUNTY OF BEXAR §

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, the _____ of Wells Fargo Bank, NA, a national banking association, on behalf of said national banking association.

_____
Notary Public in and for
the State of Texas

Joinder of Tenant

H & L Imports, Inc, a Texas corporation ("Tenant") is the tenant of the Anthon Minor Parcel, pursuant to that certain Lease Agreement between Anthon Minor and Tenant, as amended from time to time. Tenant joins in the execution of this Agreement as the current tenant of the Anthon Minor Parcel for the purpose of subjecting the Anthon Minor Parcel to the terms, provisions and conditions of this Agreement.

TENANT:

H & L Imports, Inc.,
a Texas corporation

By: _____
Name: Man Hung Li
Title: President

THE STATE OF TEXAS §
§
COUNTY OF BEXAR §

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by Man Hung Li, the President of H & L Imports, Inc., a Texas corporation, on behalf of said corporation.

_____
Notary Public in and for
the State of Texas

Joinder of Windcrest

Windcrest Economic Development Corporation ("**Windcrest**") is the fee simple owner of the Rackspace Parcel, which is leased by Windcrest to Rackspace pursuant to that certain Ground Lease Agreement dated August 2, 2007, as amended from time to time. Windcrest joins in the execution of this Agreement as the current fee simple owner of the Rackspace Parcel for the purpose of subjecting the Rackspace Parcel to the terms, provisions and conditions of this Agreement.

WINDCREST:

WINDCREST ECONOMIC DEVELOPMENT CORPORATION

By: _____
Name: _____
Title: _____

THE STATE OF _____ §
§
COUNTY OF _____ §

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, the _____ of Windcrest Economic Development Corporation, on behalf of said corporation.

_____
Notary Public in and for
the State of _____

EXECUTED effective as of the Effective Date.

RACKSPACE US, INC.
a Delaware corporation

By: _____
Name: _____
Title: _____

THE STATE OF TEXAS §
§
COUNTY OF BEXAR §

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, the _____ of Rackspace US, Inc., a Delaware corporation, on behalf of said corporation.

_____
Notary Public in and for
The State of Texas

[Signature Pages Continue]

EXHIBIT A

BEGINNING at a 3/4" iron rod found in the east line of Interstate Highway (IH) 35/ Loop 410 (R.O.W. Varies), also being the southwest corner of said Lot 44, and being the northwest corner of Lot 36, of the Replat of Toys "R" Us Subdivision, recorded in Volume 9520, Page 187, (D.P.R.B.C.T.), for the southwest corner and POINT OF BEGINNING hereof, from which a 4" Texas Department of Transportation (TXDOT) brass disk monument found in the east line of said IH 35/ Loop 410 at station 1882+00 and offset right 213.20', bears S09°56'18"W, a distance of 454.36 feet;

THENCE, with the east line of said IH 35/ Loop 410, same being the west line of said Lot 44, N09°56'18"E, a distance of 437.50 feet to 1/2-inch iron rod found for an angle point hereof, same being the southwest corner of Lot 45 of said Replat Establishing Simon Apple Garden;

THENCE, leaving the east line of said IH 35/ Loop 410, same being the west line of said Lot 44, with the common line between said Lots 44 and 45, the following five (5) courses and distances:

1) S80°21'18"E, a distance of 217.15 feet to a PK nail found for an angle point hereof, same being the southeast corner of said Lot 45, and a southeast corner of said Lot 44;
2) N10°05'00"E, a distance of 147.36 feet to a 1/2-inch iron rod found for an angle point hereof, same being a northeast corner for said Lot 45, also being an angle point for said Lot 44;
3) N80°16'37"W, a distance of 22.47 feet to a 1/2-inch iron rod found for an angle point hereof, same being an angle point for said Lots 44 and 45;
4) N09°43'58"E, a distance of 9.05 feet to a 1/2-inch iron rod found for an angle point hereof, same being a northeast corner for said Lot 45, also being an angle point for said Lot 44;
5) N80°08'26"W, a distance of 195.02 feet to a 1/2-inch iron rod found for an angle point hereof, same being the northwest corner of said Lot 45, also being an angle point of said Lot 44, same being a point in the east line of said IH 35/ Loop 410;

THENCE, with the east line of said IH 35/ Loop 410, same being the west line of said Lot 44, N09°56'18"E, a distance of 64.23 feet to a 1/2-inch iron rod with "Vickery" cap found for an angle point hereof, same being the southwest corner of Lot 46 of said Replat Establishing Simon Apple Garden, also being an angle point for said Lot 44;

THENCE, leaving the east line of said IH35/ Loop 410, same being the west line of said Lot 44, with the common line between said Lots 44 and 46, S80°07'28"E, a distance of 225.13 feet to a 1/2-inch iron found for an angle point hereof, same being the southeast corner of said Lot 46, also being an angle point for said Lot 44;

THENCE, continuing with the common line between said Lots 44 and 46, N09°56'34"E, a distance of 230.05 feet a 1/2-inch iron rod found for an angle point hereof, same being the northeast corner of said Lot 46, same being an angle point for said Lot 44;

THENCE, crossing through said Lot 24, S80°02'51"E, a distance of 37.96 feet to a PK nail found for an angle point hereof, same being an angle point for said 11.5384 acre tract, also being an angle point for said Lot 44;

THENCE, continuing through said Lot 24, with a north line of said 11.5384 acre tract, N89°45'32"E, a distance of 103.11 feet to a PK nail found for an angle point hereof, same being an angle point of said 11.5384 acre tract, said point lies within said Lot 24;

THENCE, continuing through said Lot 24, with a west line of said 11.5384 acre tract, N00°36'38"E, a distance of 327.41 feet to a PK nail found for an angle point hereof, same being an angle point of said 11.5384 acre tract, said point lies within said Lot 24;

THENCE, continuing through said Lot 24, with a south line of said 11.5384 acre tract, N80°48'25"W, a distance of 311.55 feet to a PK nail found for an angle point hereof, same being an angle point of said 11.5384 acre tract, and being a point in the west line of said Lot 24, also being a point in the east line of said IH35/ Loop 410;

THENCE, with the west line of said Lot 24, same being the east line of said IH 35/ Loop 410, N09°56'18"E, a distance of 54.60 feet to a 1/2-inch iron rod with "Doucet & Assoc," cap set for a northwest corner hereof, same being a northwest corner of said Lot 24, and the southwest corner of Lot 22 of the Simon Subdivision recorded in Volume 7300, Page 69, (D.P.R.B.C.T.);

THENCE, with the south line of said Lot 22, and the north line of said Lot 24, N85°26'50"E, a distance of 381.62 feet to a PK nail with "Brown" shiner found for a point of curvature (P.C.) hereof, same being a P.C. for said Lot 22, also being a northwest corner and P.C. of said Lot 25;

THENCE, continuing with the southeast line of said Lot 22, and with the northwest line of said Lot 25, along a curve to the left, whose radius is 159.75 feet, whose delta is 85°23'33", at an arc length of 238.09 feet, and overall chord which bears N42°47'06"E, a distance 216.66 feet to a 1/2-inch iron rod with

"Vickery" aluminum cap found for a point of tangency (P.T.) hereof, same being a P.T. for said Lots 22 and 25;

THENCE, continuing with the west line of said Lot 22, and the east line of said Lot 25, N00°05'45"E, a distance of 249.80 to a 1/2-inch iron rod with "Vickery" cap found for a northwest corner hereof, same being a northwest corner of said Lot 25, and a northeast corner of said Lot 22, same being a point in the south line of Walzem Road/ Farm to Market (FM) 1976 (R.O.W. Varies);

THENCE, with the south line of said Walzem Road/ FM 1976, and the north line of said Lot 25, N89°47'19"E, a distance of 112.39 feet to a Mag nail with "Brown" shiner found for an angle point hereof, same being an angle point for said Lot 25, also being an angle point for said Walzem Road/ FM 1976, from which a 4" Texas Department of Transportation (TXDOT) brass disk monument found bears, S76°06'59"W, a distance of 1.29 feet;

THENCE, continuing with the south line of said Walzem Road/ FM 1976, and the north line of said Lot 25, S88°27'18"E, a distance of 120.88 feet to a Mag nail with "Doucet" washer set for an angle point hereof;

THENCE, leaving the south line of said Walzem Road/ FM 1976, same being the north line of said Lot 25, passing through said Lot 25 the next four (4) courses and distances:

1) S00°17'20"E, distance of 268.51 feet to a Mag nail with "Doucet" washer set for an angle point hereof;
2) Along a curve to the right, whose radius is 921.48 feet, whose delta is 01°33'47"", whose arc length is 25.14 feet, and whose chord bears N77°14'29"E, a distance of 25.14 feet to a Mag nail with "Doucet" washer set for a point of reverse curvature (P.R.C.) hereof;

3) Along a curve to the left, whose radius is 750.00 feet, whose delta is 09°26'15", whose arc length is 123.55 feet, and whose chord bears N73°18'14"E, a distance of 123.41 feet to a Mag nail with "Doucet" washer set for a point of compound curvature (P.C.C.) hereof;
4) Along a curve to the left, whose radius is 2010.40 feet, whose delta is 03°54'26", whose arc length is 137.10' feet, and whose chord bears N66°37'52"E, a distance of 137.07 feet to a Mag nail with "Doucet" washer set for a point of compound curvature (P.C.C.) hereof;

THENCE, continuing through said Lot 25, and in part through said Lot 44, along a curve to the left, whose radius is 500.00 feet, whose delta is 10°19'44", at an arc length of 14.77 feet passing the common line between said Lots 25 and 44, for an overall arc length of 90.14 feet, and whose overall chord bears N59°30'47"E, a distance of 90.02 feet to a Mag nail with "Doucet" washer set for a P.R.C. hereof, said point lies within said Lot 44;

THENCE, continuing in part through said Lot 44, and through said Lot 38, along a curve to the right, whose radius is 500.00 feet, whose delta is 11°52'41", at an arc length of 3.44 feet passing the common line between said Lots 44 and 38, for an overall arc length of 103.66 feet, and whose overall chord bears N60°17'16"E, a distance of 103.47 feet to a Mag nail with "Doucet" washer set for a P.T. hereof, said point lies in said Lot 38;

THENCE, continuing through said Lot 38, N16°51'51"W, a distance of 69.10 feet to a PK nail with "Brown" shiner found for an angle point hereof, same being a point in the south line of said Walzem Road/ FM 1976, also being the northern most northwest corner of said Lot 38, and the northeast corner of said Lot 44;

THENCE, with the south line of said Walzem Road/ FM 1976, same being the north line of said Lot 38, N89°44'36"E, a distance of 592.04 feet to a 1/2-inch iron rod with "Vickery" aluminum cap found for an angle point hereof, same being an angle point in the south line of said Walzem Road/ FM 1976, and an angle point in the north line of said Lot 38;

THENCE, continuing with the south line of said Walzem Road/ FM 1976, same being the north line of said Lot 38, N88°28'52"E, a distance of 17.99 feet to a "X" cut in concrete for the northern most northeast corner hereof, same being the northern most northeast corner of said Lot 38, also being the northwest corner of Lot 39 of said Replat of Subdivision Plat of Simon Subdivision;

THENCE, leaving the south line of said Walzem Road/ FM 1976, with the common line between said Lots 38 and 39 the following four (4) courses and distances:

1) S00°16'05"E, a distance of 151.24 feet to a 1/2-inch iron rod with "Vickery" aluminum cap found for an angle point hereof, same being the southwest corner of said Lot 39, and an angle point for said Lot 38;
2) N89°45'07"E, a distance of 131.79 feet to a 1/2-inch iron rod found for an angle point hereof, same being a southeast corner of said Lot 39, also being an angle point for said Lot 38;
3) N00°14'38"W, a distance of 18.06 feet to a 1/2-inch iron rod with "Vickery" cap found for an angle point hereof, same being an angle point for said Lots 38 and 39;

4) N89°37'31"E, a distance of 27.57 feet to a PK nail found for the eastern most northeast corner hereof, same being the eastern most southeast corner for said Lot 39, and the eastern most northeast corner of said Lot 38, also being a point in the west line of Lot 2, Block 1 of the Replat and Subdivision Plat Establishing Roosevelt High School Subdivision recorded in Volume 9566, Page 132, (D.P.R.B.C.T.);

THENCE, in part with the east line of Lot 38 and in part with the east line of Lot 37, both of said Replat of Simon Subdivision, and with the west line of Lot 2 of said Roosevelt High School, S00°13'42"E, at a distance of 685.73 feet passing the northeast corner of Lot 37, and being the southeast corner of Lot 38, for a total distance of 1379.71 feet to a PK Nail with "Brown" washer found for an interior ell corner hereof, said point is also an interior ell corner of said Lot 37, and being the southwest corner of said Lot 2;

THENCE, with a north line of said Lot 37, and in part with the south line of said Lot 2, N89°35'15"E, a distance of 63.93 feet to a PK with Shiner found for an exterior ell corner hereof, said point is also an exterior ell corner of said Lot 37;

THENCE, in part with an east line of said Lot 37, and in part with an east line of Lot 44 of said Replat Establishing Simon Apple Garden, S00°31'25"E, a distance of 145.30 feet to a 1/2" iron rod found for a southeast corner hereof, said point is also a southeast corner of said Lot 44 and being the northwest corner of Lot 12, Block 10 of Camelot Subdivision Unit 7, recorded in Volume 6500, Page 144 (D.P.R.B.C.T.), and being a point in the east line of a 40' City Public Service Board Easement as shown on said plat,

THENCE, with the south line of said Lot 44, and the north line of said 40' City Service Board Easement, S89°43'01"W, a distance of 39.73 feet to a 1/2" iron rod found for an interior ell corner hereof, said point is also a point on the west line of said 40' City Public Service Board Easement, and being an interior ell corner of said Lot 44;

THENCE, with the west line of said 40' City Public Service Board Easement, and a west line of said Lot 44, S00°56'32"W, a distance of 15.88 feet to a 1/2" iron rod found for an exterior ell corner hereof, said point is also an exterior ell corner of said Lot 44, and being the northeast corner of Lot 13 of said Camelot Subdivision;

THENCE, in part with the north line of Lots 13-26, Block "D" of said Camelot Subdivision, and in part with the north line of Lot 9, Block "B", of Camelot Subdivision Unit 5A, recorded in Volume 6500, Page 16 (D.P.R.B.C.T.), and in part with the north line of Lot 49 of Windsor Square Wal-Mart III recorded in Volume 9560, Page 80 (D.P.R.B.C.T.), and in part with the north line of Lot 36 of said Toys "R" Us, S89°31'43"W, a distance of 2200.44 feet to the POINT OF BEGINNING and containing 66.9915 Acre (2,918,150 sq. ft.) of land, more or less.

EXHIBIT B

BEING 2.6424 ACRES (115,104 SQUARE FEET) OF LAND OUT OF LOT 24, NEW CITY BLOCK 1290, SIMON SUBDIVISION, IN THE CITY SAN ANTONIO, BEXAR COUNTY, TEXAS, ACCORDING TO PLAT THEREOF RECORDED IN VOLUME 7800, PAGE 9 THROUGH 13, INCLUSIVE, DEED AND PLAT RECORDS OF BEXAR COUNTY, TEXAS. SAID 2.6424 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED IN METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A FOUND CAPPED ½ INCH IRON ROD FOUND FOR THE COMMON WESTERLY CORNER OF LOTS 24 AND 26 IN THE EASTERLY LINE OF INTERSTATE HIGHWAY 35 (LOOP 410) (300 FEET WIDE);

THENCE NORTH 10 DEGREES 11 MINUTES 06 SECONDS EAST, ALONG SAID EASTERLY LINE OF INTERSTATE HIGHWAY 35 (LOOP 410) A DISTANCE OF 337.40 FEET TO A 5/8 INCH IRON ROD SET FOR THE NORTHWESTERLY CORNER;

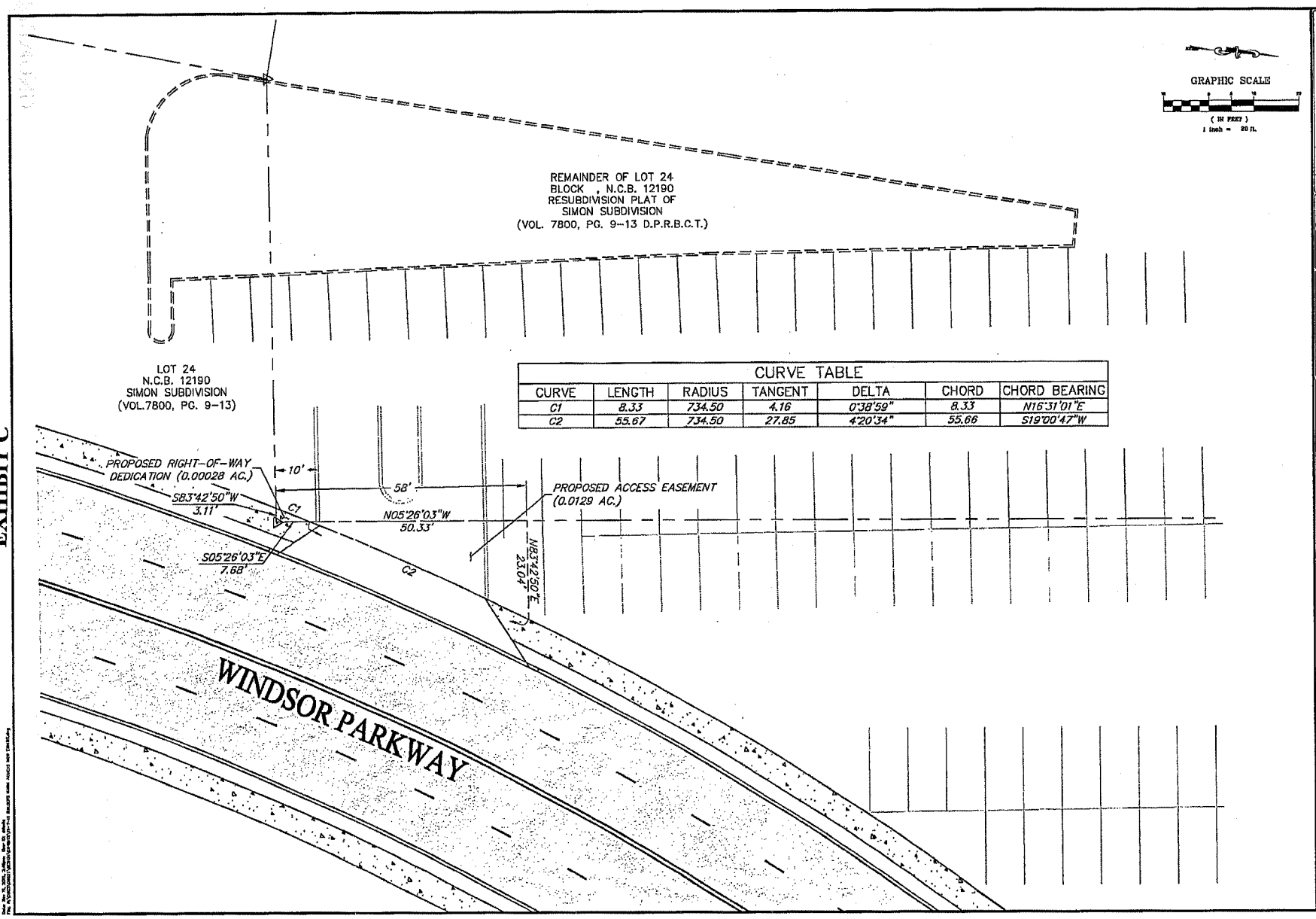
THENCE NORTH 80 DEGREES 30 MINUTES 17 SECONDS EAST, A DISTANCE OF 311.52 FEET TO A P.K. NAIL SET FOR CORNER;

THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS WEST, A DISTANCE OF 327.26 FEET TO A P.K. NAIL SET FOR THE SOUTHEAST CORNER ;

THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST, A DISTANCE OF 103.15 FEET TO A 5/8 INCH IRON ROD FOUND FOR AN ANGLE POINT;

THENCE NORTH 79 DEGREES 48 MINUTES 00 SECONDS WEST, ALONG THE COMMON LINE OF LOT 24 AND 26, A DISTANCE OF 263.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 2.6424 ACRES (115,104 SQUARE FEET) OF LAND.

EXHIBIT C



CURVE TABLE						
CURVE	LENGTH	RADIUS	TANGENT	DELTA	CHORD	CHORD BEARING
C1	8.33	734.50	4.16	0°38'59"	8.33	N16°31'01"E
C2	55.67	734.50	27.85	4°20'34"	55.66	S19°00'47"W

No.	DATE

THIS DOCUMENT IS RELEASED FOR THE PURPOSE OF INTERIM REVIEW UNDER THE AUTHORITY OF ROBERT DON MCGRARY, P.E. 34588 AND IS NOT TO BE USED FOR FINAL BIDDING, PERMIT, ADJUSTMENT(S) AND/OR CONSTRUCTION PURPOSES.

CHECKED: ZBA/RW
B. KOHRS
DRAFTED: MOSES
SEPTEMBER 2011
SCALE: 1"=20'
CAD FILE:

DON MCGRARY & ASSOCIATES, INC.
ENGINEERS & SURVEYORS
333 BISSEPORT
SAN ANTONIO, TEXAS 78216-2602
(210) 349-2651

RACKER ROAD - OLD WINDSOR PARK MALL

BUILDERS MARK
ACCESS R.O.W. EXHIBIT

CITY OF WINDCREST, TEXAS

SHEET
EX1
OF 1

DATE: 10/17/2011 | PROJ. NO.: 99011

738-164

STATE OF TEXAS

COUNTY OF BEXAR

FEB--4-77 16563 LS — I 250

AGREEMENT

WHEREAS, FRED NIEMANN and wife, VIRGINIA NIEMANN, and LARRY NIEMANN, Trustee, heretofore entered into a certain Agreement with Melvin Simon & Associates, Inc., dated August 25, 1972, and recorded in Volume 6935, pages 332 through 340, in the Deed Records of Bexar County, Texas (hereinafter referred to as the "Agreement"), relative to the development and improvement of a certain 73.9 acre tract of land located on Interstate 35 and Walzem Road in San Antonio, Bexar County, Texas; and

WHEREAS, the undersigned WINDSOR PARK DEVELOPMENT COMPANY, a Texas limited partnership thereafter succeeded to the rights of the said Melvin Simon & Associates, Inc., in and to the above described 73.9 acre tract and acquired said tract from FRED NIEMANN, VIRGINIA NIEMANN, and LARRY NIEMANN, Trustee, by deed dated November 7, 1972, subject to the aforesaid Agreement, which deed is recorded in Volume 6933, Page 250, Deed Records of Bexar County, Texas; and

WHEREAS, the undersigned JAMES CHARLES NIEMANN, Trustee, succeeded to the rights, title and interests of LARRY NIEMANN, Trustee, by deed dated February 28, 1975 and recorded in Volume 7563, Page 973, Deed Records of Bexar County, Texas; and

WHEREAS, WINDSOR PARK DEVELOPMENT COMPANY now owns said 73.9 acre tract and has completed the construction and erection of retail shopping center thereon as contemplated by said Agreement; and

WHEREAS, the extension of Gwain Drive was inadvertently constructed upon such 73.9 acre tract in such a manner that it does not abut and touch the south boundary of said 73.9 acre tract (which is also the north boundary of the adjoining tract to the south) as called for under Section 1 of said Agreement; and

WHEREAS, the extension of Gwain Drive is the east/west perimeter road along the south boundary of said 73.9 acre tract; and

WHEREAS, it is the desire of the parties to have the extension of Gwain Drive constructed in the place and the manner as was originally contemplated by the parties;

NOW THEREFORE, WINDSOR PARK DEVELOPMENT COMPANY agrees that it will widen the existing extension of Gwain Drive so that it will abut and touch the south boundary line of the 73.9 acre tract as per the August 25, 1972 Agreement and the map attached thereto; and WINDSOR PARK DEVELOPMENT COMPANY further agrees that such widening will be completed within one year from the date hereof at its expense; and WINDSOR PARK DEVELOPMENT COMPANY hereby acknowledges and reaffirms the provisions of the August 25, 1972 Agreement; and

FURTHERMORE, FRED NIEMANN and wife, VIRGINIA NIEMANN, and JAMES CHARLES NIEMANN, TRUSTEE hereby acknowledge and reaffirm the provisions of the August 25, 1972 Agreement and do hereby agree that WINDSOR PARK DEVELOPMENT COMPANY shall have and is hereby given an additional one year from date hereof to construct and complete said widening of the extension of Gwain Drive.

IN WITNESS WHEREOF, the parties have hereto affixed their signatures this 24th day of January, 1977.

WINDSOR PARK DEVELOPMENT COMPANY,
A Texas Limited Partnership.

By _____
Melvin Simon, General Partner

Fred Niemann
FRED NIEMANN

Virginia Niemann
VIRGINIA NIEMANN

James Charles Niemann, Trustee
JAMES CHARLES NIEMANN, TRUSTEE

The undersigned consents and joins in the foregoing.

Larry Niemann
LARRY NIEMANN (as former Trustee and predecessor to James Charles Niemann, Trustee)

VOL 8009 PAGE 221

STATE OF INDIANA I

COUNTY OF MARION I

Before me, a Notary Public in and for said County and State, on this day personally appeared MELVIN SIMON, known to me to be the person whose name is subscribed to the foregoing instrument, and known to me to be a General Partner in WINDSOR PARK DEVELOPMENT COMPANY, a Texas limited partnership, and acknowledged to me that he executed said instrument for the purposes and consideration therein expressed, and as the act of said limited partnership.

SEAL Given under my hand and seal of office this 24th day of January, 1977.

Lois A. Schaler
Notary Public in and for Marion County, Indiana Lois A. Schaler

My Commission Expires:
May 6, 1980

STATE OF TEXAS I

COUNTY OF TRAVIS I

Before me, a Notary Public in and for said County and State, on this day personally appeared FRED NIEMANN and VIRGINIA NIEMANN, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they each executed said instrument for the purposes and consideration therein expressed.

Given under my hand and seal of office this the 2nd day of February, 1977.

Jewel Dobbs (Jewel Dobbs)
Notary Public in and for Travis County, Texas

My commission expires June 1, 1977

STATE OF TEXAS I

COUNTY OF TRAVIS I

Before me, a Notary Public in and for said County and State, on this day personally appeared JAMES CHARLES NIEMANN and LARRY NIEMANN, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they each executed said instrument for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office this the 2nd day of February, 1977.

Jewel Dobbs (Jewel Dobbs)
Notary Public in and for Travis County. Texas

My Commission expires June 1, 1977.

FILED IN MY OFFICE
ROBERT D. GREEN
COUNTY CLERK BEXAR CO.

1977 FEB 4 AM 10 56

Return to:
Riemann & Riemann
1210 American Bank Tower
Austin, Texas 78701

STATE OF TEXAS
COUNTY OF BEXAR

I hereby certify that this instrument was FILED on the date and at the time stamped hereon by me and was duly RECORDED in the Volume and Page of the DEED RECORDS of Bexar County Texas as stamped hereon by me.

FEB 4 1977

COUNTY CLERK
BEXAR COUNTY, TEXAS

VOL. 8009 PAGE 223

8-21-72

12.50

STATE OF TEXAS)
) SS: 289563
COUNTY OF TRAVIS)

AUG-10-72 101577 11 — I

VOL 6935 PAGE 332

THIS AGREEMENT by and between FRED NIEMAN and wife, VIRGINIA NIEMANN, and LARRY NIEMANN, Trustee, hereinafter called Owners, and MELVIN SIMON & ASSOCIATES, INC., hereinafter called Developer.

W I T N E S S E T H:

WHEREAS, Owners have optioned unto Developer 73.9 acres of land on Interstate 35 and Walzem Road in Bexar County, Texas, more fully described in plat attached, and

WHEREAS, as one of the conditions of purchase, Developer agreed to give unto Owners and/or the public certain rights of access to the said 73.9 acres and

WHEREAS, the parties now desire to set forth those rights in greater detail,

NOW, THEREFORE, in consideration of the premises and of the sum of ONE DOLLAR ($1.00) each in hand to the other paid, the receipt and sufficiency of which is hereby acknowledged, it is mutually hereby agreed as follows:

1. Developer agrees that, in conjunction with the development of the property as a retail shopping center, Developer will construct or cause to be constructed an extension of Gwain Drive, beginning at the intersection of Gwain Drive and Mordred Drive, proceeding along the southern boundary of said 73.9 acre tract, and intersecting with the IH 35 frontage road. Said extension of Gwain Drive shall abut and touch the south common boundary of said 73.9 acre tract and Owners adjoining tract to the south beginning at the IH 35 frontage road and extending to within 220 feet of King Arthur Drive. Owners shall have

curb cut rights on south side of Gwain extension, west of King Arthur, subject to Developer's approval which may not be unreasonably withheld.

2. Said extension of Gwain Drive shall be a street of at least thirty-four (34) feet of paving width (excluding curbing, if any) on the portion thereof from King Arthur Drive to IH 35 frontage road. Developer, to the best of his ability, shall prohibit or cause to be prohibited, any parking on either side of said extension on the entire length of said street, The street shall be built in accordance with city construction standards.

3. Developer also agrees that the north/south perimeter road on the west side of said 73.9 acre tract shall begin at a point on Walzem Road, thence proceeding in a southerly direction, thence curving and proceeding in a westerly direction so as to be approximately adjacent to the south boundary of the corner tract reserved by Owners (i.e. southeast corner of IH 35 and Walzem Road) thence in a southerly direction parallel to the IH 35 frontage road and intersecting with the extension of Gwain Drive at a point 200 feet plus or minus from IH 35 frontage road. Developer further agrees that vehicular access will be provided between said corner tract from the 73.9 acre tract. There shall be one access in the middle of the 238.02' curve at the southeast corner of said corner tract, and one access on the south boundary line of said corner tract to be located 225 feet east of the IH 35 frontage road.

4. The parties agree to the roads as shown on the attached plat, and such roads may be changed or altered by Developer subject to Owners' approval which may not be unreasonably withheld; and provided further that such roads may not be changed under any circumstances so as to conflict with the provisions of this agreement.

5. Developer further agrees that Owners shall have the

VOL 6935 PAGE 333

right of free passage for themselves and for the public over the said extension of Gwain Drive and said north/south perimeter road, described above, which roads shall be two-way roads.

6. This Agreement shall inure to and be binding upon the heirs, successors and assigns of the parties hereto.

VOL 6935 PAGE 334

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this 25 day of August, 1972.

Witness:

Fred Niemann
FRED NIEMANN

Virginia Niemann
VIRGINIA NIEMANN

Larry Niemann, Trustee
LARRY NIEMANN, Trustee

MELVIN SIMON & ASSOCIATES, INC.

Attest:

Herbert Simon, Secretary

By:
Melvin Simon, President

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Melvin Simon and Herbert Simon, to me personally known as the President and Secretary, respectively of said corporation who acknowledged the execution of the foregoing instrument for and on behalf of said corporation by authority of its Board of Directors.

WITNESS my hand and notarial seal this 25th day of August, 1972.

Jo Ann Curry Notary Public

My Commission Expires:
9-21-75

THE STATE OF TEXAS)
) SS:
COUNTY OF TRAVIS)

Before me, the undersigned authority, on this day personally appeared Fred Nierman, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that said person executed the same for the purposes and consideration therein expressed.

GIVEN under my hand and seal of office this the 26th day of September, 1972.

Mary Ann Holcomb
Notary Public, Travis County, Texas

My Commission Expires:

June 1, 1973

THE STATE OF TEXAS)
) SS:
COUNTY OF TRAVIS)

Before me, the undersigned authority, on this day personally appeared Virginia Nierman known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that said person executed the same for the purposes and consideration therein expressed.

GIVEN under my hand and seal of office this the 26th day of September, 1972.

Mary Ann Holcomb
Notary Public, Travis County, Texas

My Commission Expires:

June 1, 1973

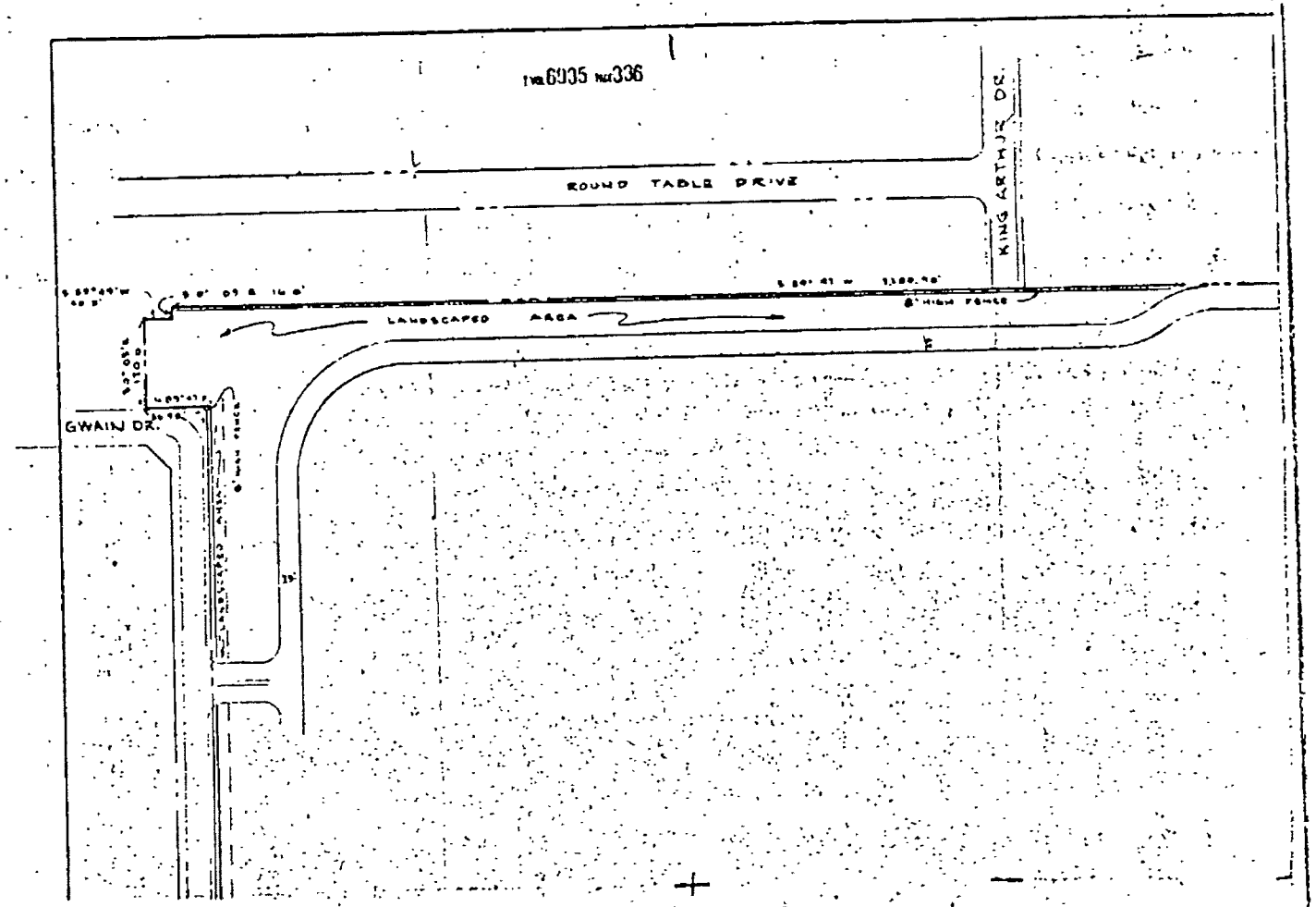
THE STATE OF TEXAS)
) SS:
COUNTY OF TRAVIS)

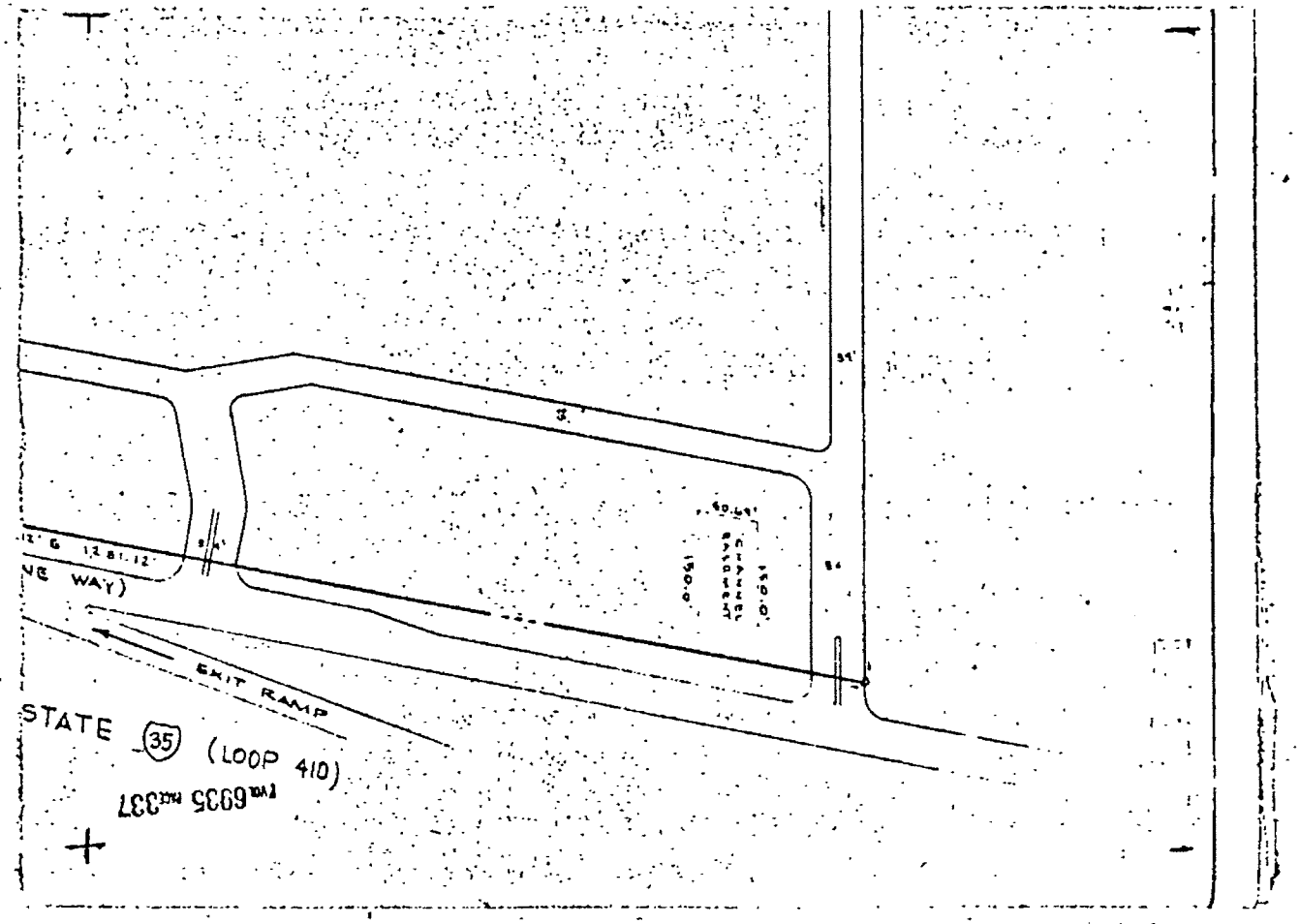
Before me, the undersigned authority, on this day personally appeared Larry Nierman, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that said person executed the same for the purposes and consideration therein expressed.

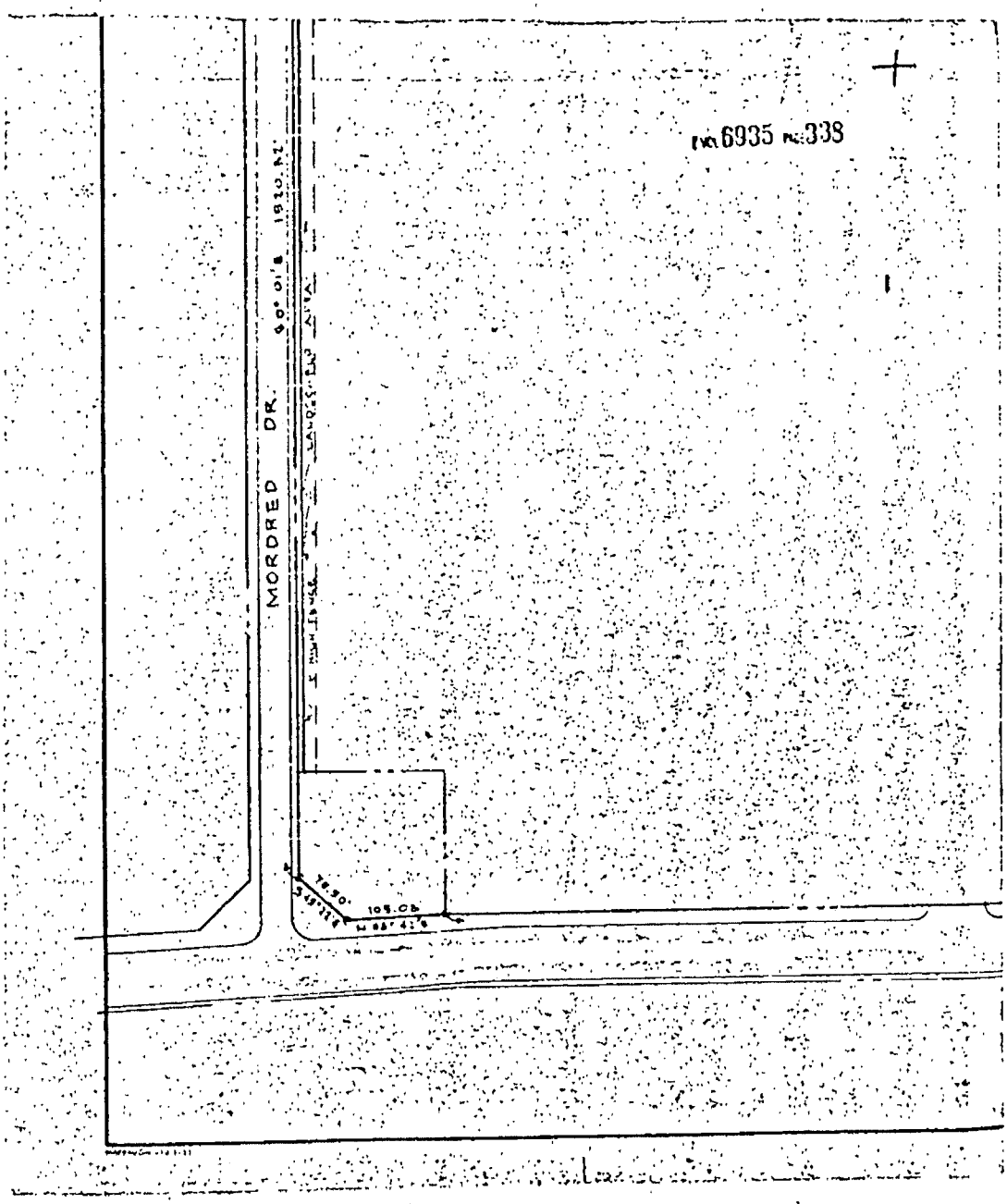
GIVEN under my hand and seal of office this the 26th day of September, 1972.

Mary Ann Holcomb
Notary Public, Travis County, Texas

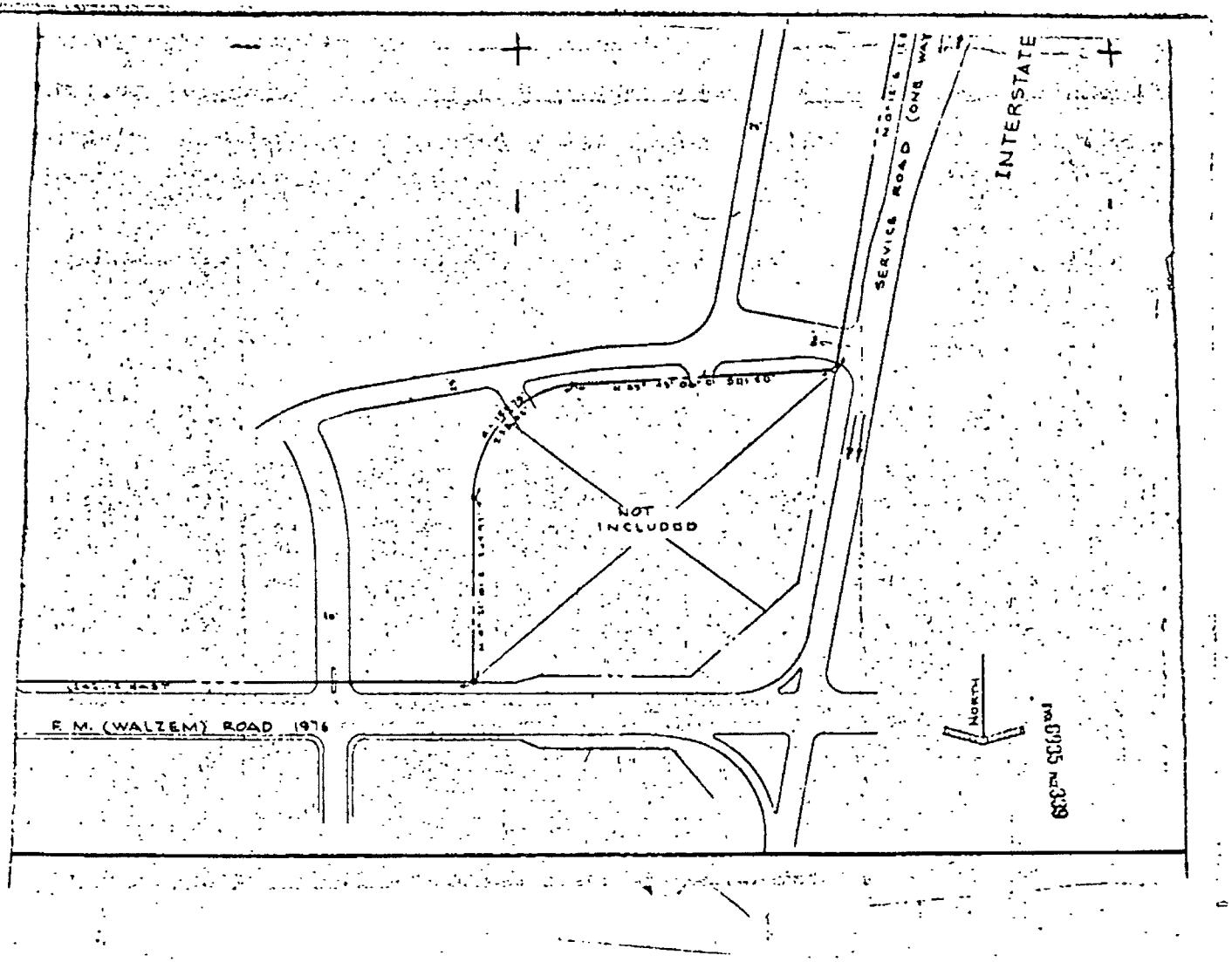
VOL 6935 PAGE 335


ROUND TABLE DRIVE
KING ARTHUR DR.
LANDSCAPED AREA
GWAIN DR.


STATE 35 (LOOP 410)
EXIT RAMP
NE WAY)
54'
150.0'
150.0'



Vol. 6935 Pg. 338


INTERSTATE
SERVICE ROAD (ONE WAY)
NOT INCLUDED
F. M. (WALZEM) ROAD 1976
NORTH

Approved by:

Developer

Owners Fred Niemann

Larry Niemann Trustee

Virginia Niemann

August 25, 1972

JOB NO	PROPOSED:				
CERTIFIED BY	SHOPPING CENTER				
	SAN ANTONIO, TEXAS				
	MELVIN SIMON & ASSOCIATES, INC. DEVELOPER 1112 NORTH MERIDIAN STREET INDIANAPOLIS, INDIANA 46202 AREA CODE 317 [illegible]				
	SCALE	DR'S BY	DRAWN BY	DATE	DRAWING NUMBER
	1" = 100'	H. HUBULS CONSULTING ENGINEER	Rmyr.	8-13-72	1 S.

NO	DATE	DESCRIP
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7		
6		
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4		
3		
2		
1	9-19-72	MEDIANS

REVISIONS

STATE OF TEXAS
COUNTY OF BEXAR

I hereby certify that this instrument was FILED on the date and at the time stamped hereon by me and was duly RECORDED in the Volume and Page of the OFFICIAL RECORDS of Bexar County, Texas, as stamped hereon by me.

NOV 13 1972

James W. Knight
COUNTY CLERK
BEXAR COUNTY, TEXAS

FILED IN MY OFFICE
JAMES W. KNIGHT
COUNTY CLERK BEXAR CO.

1972 NOV 10 PM 3 37

Return to:
Fred Niemann
505 International Bldg
Austin, Texas 78701

VOL 6935 PAGE 341

E.O.A.(O.E.A)

"EASEMENT AND OPERATING AGREEMENT"

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SKETCH 1

EASEMENTS AND OPERATING AGREEMENT
VOLUME 7451, PAGE 649,
D.R.B.C.T.

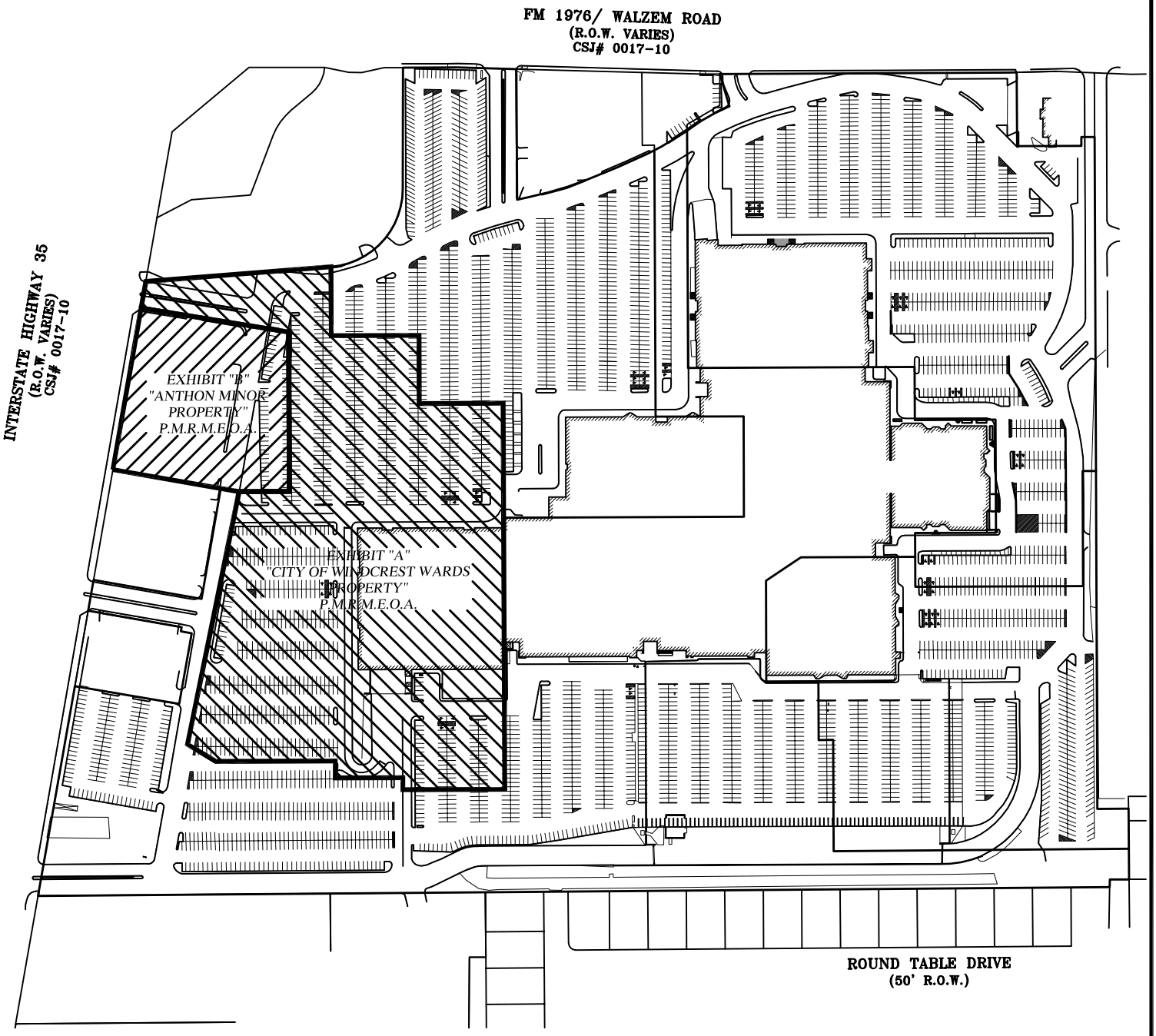
Doucet & Associates, Inc.
7401 B Hwy. 71 West, Suite 160
Austin, TX 78735, Phone: (512) 583-2600 Fax: (512) 583-2601

AUSTIN, TEXAS - NORTHAMPTON, MASSACHUSETTS - ROSEVILLE, CALIFORNIA

www.doucetandassociates.com

P.M.R.M.E.O.A.

"PARTIAL MUTUAL RELEASE AND MODIFICATION OF EASEMENT AND OPERATING AGREEMENT"



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SKETCH 2

PARTIAL MUTUAL RELEASE AND MODIFICATION
OF EASEMENT AND OPERATING AGREEMENT
DOCUMENT NUMBER 20070034080,
O.P.R.R.P.B.C.T.

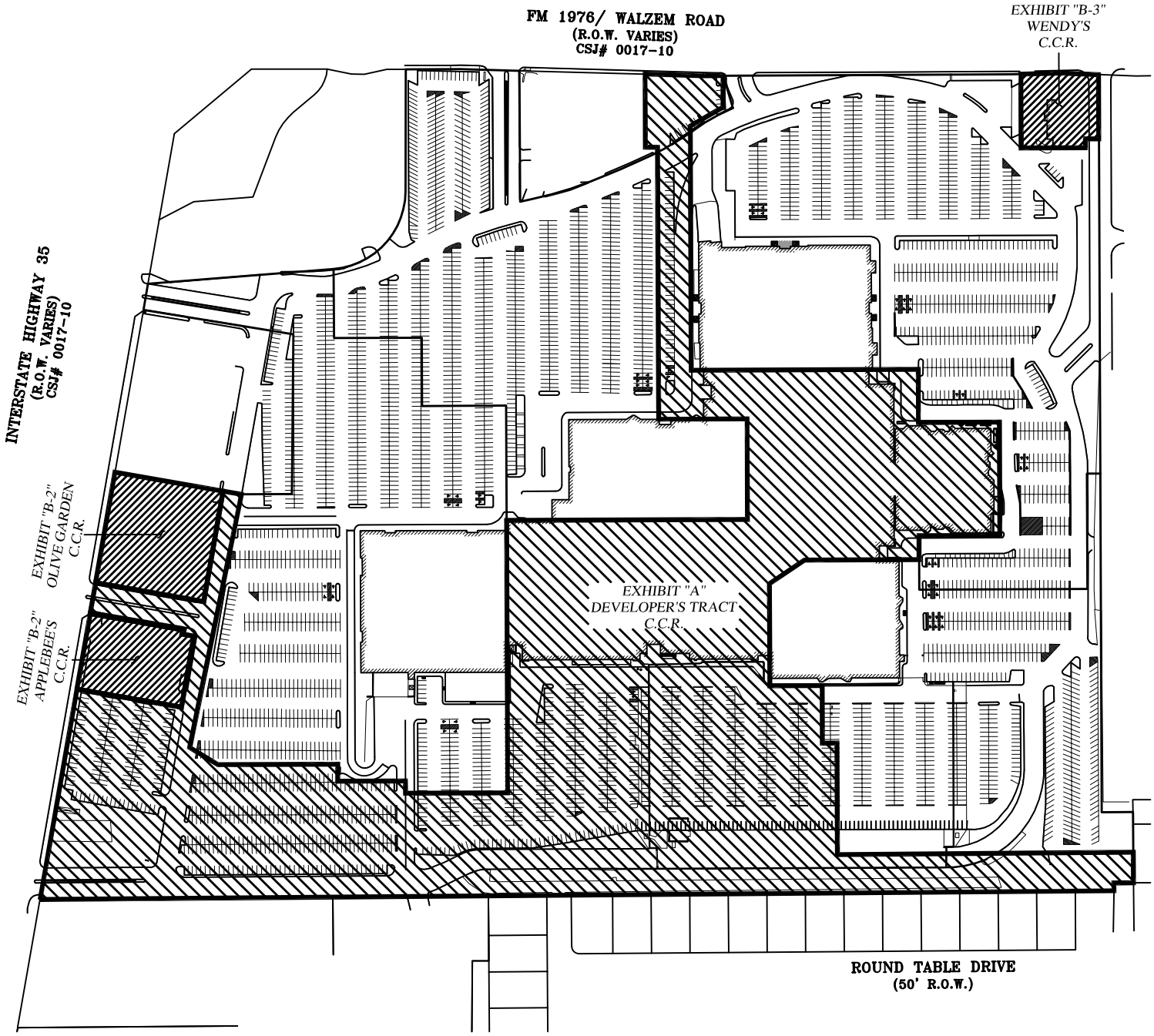
Doucet & Associates, Inc.
7401 B Hwy. 71 West, Suite 160
Austin, TX 78735, Phone: (512) 583-2600 Fax: (512) 583-2601

AUSTIN, TEXAS - NORTHAMPTON, MASSACHUSETTS - ROSEVILLE, CALIFORNIA

www.doucetandassociates.com

C.C.R.

"COVENANTS, CONDITIONS AND RESTRICTIONS"



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SKETCH 3

COVENANTS, CONDITIONS AND RESTRICTIONS AGREEMENT
APPLEBEE'S, OLIVE GARDEN AND WENDY'S OUTLOTS
WINDSOR PARK MALL
VOLUME 8630, PAGE 1609,
O.P.R.R.P.B.C.T.

Doucet & Associates, Inc.
7401 B Hwy. 71 West, Suite 160
Austin, TX 78735, Phone: (512) 583-2600 Fax: (512) 583-2601

AUSTIN, TEXAS - NORTHAMPTON, MASSACHUSETTS - ROSEVILLE, CALIFORNIA

www.doucetandassociates.com

EASEMENT AND USE RESTRICTION AGREEMENT

This Easement and Use Restriction Agreement (this "**Agreement**") is made and entered into effective as of the ____ day of _____, 2012 (the "**Effective Date**"), by and between (i) RACKSPACE US, INC., a Delaware corporation ("**Rackspace**"); (ii) GVD COMMERCIAL PROPERTIES, INC., a California corporation ("**GVD**"); (iii) MONTE MAC NO. 2, a California limited partnership ("**MM2**"); and (iv) WINDCREST ECONOMIC DEVELOPMENT CORPORATION, a Section 4(b) corporation, on behalf of itself and the City of Windcrest, Texas ("**Windcrest**").

ARTICLE 1.

Recitals

1.1 **Rackspace Parcel**. Windcrest is the Owner of certain real property in the City of Windcrest, Bexar County, Texas, more particularly described and depicted on **Exhibit A and A-1** attached hereto (the "**Rackspace Parcel**") and Rackspace is the ground lessee thereof pursuant to the "Rackspace Lease" (defined below).

1.2 **Olive Garden Parcel, Benny's Parcel and Applebee's Parcel**. GVD is the Owner of certain real property in the City of Windcrest, Bexar County, Texas adjacent to the Rackspace Parcel, more particularly described and depicted on **Exhibit B and B-1** attached hereto (the "**Olive Garden Parcel**"). GVD has the authority to enter into this Agreement as to the Olive Garden Parcel, without the joinder of any other party, including without limitation, any Occupant, Permittee or mortgagee of the Olive Garden Parcel (except for the specific consent attached hereto and made a part hereof for all purposes). MM2 is the Owner of certain real property in the City of Windcrest, Bexar County, Texas adjacent to the Rackspace Parcel, more particularly described and depicted on **Exhibit C and C-1** attached hereto (the "**Benny's Parcel**"). MM2 is also the Owner of certain real property in the City of Windcrest, Bexar County, Texas adjacent to the Rackspace Parcel, more particularly described and depicted on **Exhibit D and D-1** attached hereto (the "**Applebee's Parcel**") (the Olive Garden Parcel, Benny's Parcel and Applebee's Parcel are each referred to herein as an "**Outparcel**", and collectively referred to herein as the "**Outparcels**"). MM2 has the authority to enter into this Agreement as to the Benny's Parcel and Applebee's Parcel, without the joinder of any other party, including without limitation, any Occupant, Permittee or mortgagee of the Benny's Parcel or Applebee's Parcel (except for the specific consent attached hereto and made a part hereof for all purposes).

1.3 **Access, Parking and Signage Easements**. Windcrest and Rackspace (joined herein by GVD and MM2), each having all requisite authority to do so, desire to subject specifically designated portions of the Rackspace Parcel to certain easements for pedestrian and vehicular ingress, egress, parking and other purposes as set forth hereinbelow, and to subject specifically designated portions of the Rackspace Parcel to certain signage easements as set forth hereinbelow, subject to which the Rackspace Parcel shall be held, improved and conveyed in perpetuity, for the benefit of the Olive Garden Parcel, the Benny's Parcel and the Applebee's Parcel, as more particularly set forth herein.

1.4 **Use Restrictions**. Windcrest, Rackspace, GVD and MM2, each having all requisite authority to do so, desire to subject the Property to certain restrictions on use, as more particularly set forth herein.

1.5 **Termination of Prior Agreements.** As partial consideration for entering into this Agreement, the parties hereto covenant and agree that the following recorded documents and/or instruments shall be terminated of record in the official records of Bexar County, Texas, immediately following the Completion Date (defined below) under this Agreement in such official records of Bexar County, Texas (and simultaneously with the recordation of any Amendment to this Agreement that is required post construction in order to confirm and/or establish all final legal descriptions of the properties and easement areas described herein): 1) Easement and Operating Agreement, dated September 10, 1974, recorded in Volume 7451, Page 649, in the Real Property Records of Bexar County, Texas (the "**Original REA**"); as amended, modified and partially released by: (i) that certain Modification of Easement and Operating Agreement, dated May 5, 1975, recorded in Volume 7693, Page 199, in the Real Property Records of Bexar County, Texas; (ii) that certain Second Amendment of Easement and Operating Agreement, dated April 15, 1977, recorded in Volume 8069, Page 704, in the Real Property Records of Bexar County, Texas; (iii) that certain Third Amendment of Easement and Operating Agreement, dated July 16, 1985, recorded in Volume 4820, Page 1829, in the Real Property Records of Bexar County, Texas; (iv) that certain Fourth Amendment of Easement and Operating Agreement, dated November 20, 1990, recorded in Volume 5004, Page 585, in the Real Property Records of Bexar County, Texas; and (v) that certain Partial Mutual Release and Modification of Easement and Operating Agreement, dated January 25, 2007, recorded in Volume 12689, Page 1166, in the Real Property Records of Bexar County, Texas (the "**Partial Release and Modification Agreement**")(the Original REA, the amendments thereto, and the Partial Release and Modification Agreement are collectively referred to herein as the "**REA**"); and 2) Covenants, Conditions and Restrictions Agreement, dated November 1, 2000, recorded in Volume 8630, Page 1609, in the Real Property Records of Bexar County, Texas (the "**CCR Agreement**").

NOW, THEREFORE, in consideration of the premises, the sum of Ten and No/100 Dollars ($10.00), and other good and valuable consideration in hand paid, and in consideration of the mutual agreements herein made, the receipt and sufficiency of which are hereby acknowledged, the undersigned hereby agree as follows:

ARTICLE 2.

Definitions

2.1 **Access Road**. That certain publicly dedicated road or roads to be constructed on the Rackspace Parcel, in the location depicted on the Site Plan as the "Access Road".

2.2 **Occupant**: Any Person, from time to time, entitled to the use and occupancy of any portion of the Property under any lease, sublease, license, concession or other similar agreement.

2.3 **Owner**: The fee title owner of any portion of the Property from time to time. Notwithstanding the foregoing, Rackspace, as the ground lessee of the Rackspace Parcel under the Rackspace Lease, shall be deemed the "Owner" of the Rackspace Parcel for all purposes under this Agreement, and Windcrest hereby consents to such designation, and consents that this Agreement shall be placed of record to confirm and establish all easements and other rights set forth herein as burdens and exceptions to the fee interest of the Rackspace Parcel.

2.4 **Parcel**. Any of the Rackspace Parcel, the Olive Garden Parcel, the Benny's Parcel or the Applebee's Parcel.

2.5 **Parking Tract(s)**. Parking Tract 1, Parking Tract 2-A, Parking Tract 2-B, and Parking Tract 3, as applicable (as shown on the copy of the Site Plan attached hereto as **Exhibit E** (as further defined below), with final metes and bounds legal descriptions of each Parking Tract, the Applebee's Monument Sign Area (defined below) and the Olive Garden Monument Sign Area (defined below) to be attached to the Amendment contemplated for this Agreement as set forth below, and filed of record upon completion of all Construction Work (defined below).

2.6 **Parking Tract 1**. That certain parking area on the Rackspace Parcel, in the location depicted on the Site Plan as "Parking Tract 1"; and more particularly depicted on **Exhibit E-1** attached hereto and made a part hereof for all purposes.

2.7 **Parking Tract 2-A**. That certain parking area on the Rackspace Parcel, in the location depicted on the Site Plan as "Parking Tract 2-A"; and more particularly depicted on **Exhibit E-1** attached hereto and made a part hereof for all purposes.

2.8 **Parking Tract 2-B**. That certain parking area on the Rackspace Parcel, in the location depicted on the Site Plan as "Parking Tract 2-B"; and more particularly depicted on **Exhibit E-1** attached hereto and made a part hereof for all purposes.

2.9 **Parking Tract 3.** That certain parking area on the Rackspace Parcel, in the location depicted on the Site Plan as "Parking Tract 3"; and more particularly depicted on **Exhibit E-2** attached hereto and made a part hereof for all purposes.

2.10 **Party**. Each of Windcrest, as the current fee title owner of the Rackspace Parcel, Rackspace, as the deemed Owner of the Rackspace Parcel for all purposes under this Agreement as set forth in Section 2.3 above, GVD, as the current Owner of the Olive Garden Parcel, and MM2, as the current Owner of the Applebee's Parcel and the Benny's Parcel.

2.11 **Permittee**: All Owners, Occupants and the partners, officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees and licensees of Owners and Occupants of any particular Parcel.

2.12 **Person**: Individuals, partnerships, firms, associations, corporations, trusts, governmental agencies, administrative tribunals or any other form of business or legal entity.

2.13 **Property**. The Rackspace Parcel, the Olive Garden Parcel, the Benny's Parcel and the Applebee's Parcel, collectively.

2.14 **Rackspace Lease**. That certain Ground Lease Agreement dated August 2, 2007, as amended from time to time, by and between Windcrest Economic Development Corporation, on behalf of the City of Windcrest, as landlord, and Rackspace, as tenant. The Rackspace Lease is evidenced by that certain Memorandum of Lease dated August 3, 2007, and recorded in the Official Records of Bexar County, Texas in Volume 13039, Page 2252. Neither GVD nor MM2 is privy to the terms and conditions of the Rackspace Lease, other than those set forth in the foregoing referenced Memorandum of Lease.

2.15 **Site Plan**. That certain drawing of the Property (including the Parking Tracts) attached hereto as **Exhibit E** and made a part hereof. The "Detailed Site Plans" are those certain more detailed drawings showing the Parking Tracts and the surrounding vicinity attached hereto as **Exhibit E-1** and **Exhibit E-2**. The site plans showing the Detailed Parking Lot Layouts on the Parking Tracts as of the Completion Date (as defined below) are attached hereto as **Exhibit F-1**, **Exhibit F-2**, **Exhibit F-3** and **Exhibit F-4**.

ARTICLE 3.

Easements

3.1 **Parking, Access and Signage Easements for the Applebee's Parcel**. The Owner of the Rackspace Parcel, as the Owner of Parking Tract 1 and 2-B, does hereby GRANT, SELL and CONVEY unto the Owner(s) of the Applebee's Parcel, for the benefit of the Owner(s) of the Applebee's Parcel, and its Occupants and Permittees, the following easements:

(i) an exclusive easement (except as set forth in Section 3.2(ii) below and Section 4.1 below), appurtenant to the Applebee's Parcel, for ingress and egress by vehicular and pedestrian traffic to and from the Applebee's Parcel over, upon and across Parking Tract 1 and Parking Tract 2-B and to and from the curb cuts connecting to the Access Road in the locations depicted upon the Site Plan as "Curb Cut A" and "Curb Cut A-1", as the same exist and/or are modified from time to time, subject to the requirements of applicable law and the terms, provisions and conditions hereof;

(ii) an exclusive easement (except as set forth in Section 4.1 below), appurtenant to the Applebee's Parcel, for vehicular parking upon the parking lot(s) constructed from time-to-time on Parking Tract 1, as the same exist and/or are modified from time to time, subject to the requirements of applicable law and the terms, provisions and conditions hereof; and

(iii) an exclusive easement (except as set forth in Section 4.1 below), appurtenant to the Applebee's Parcel, for the purpose of constructing, maintaining, servicing, operating, inspecting, replacing, modifying, reconstructing and/or removing one (1) monument sign advertising a then-current business operated on the Applebee's Parcel, upon the portion of Parking Tract 2-B depicted on the Site Plan as "Applebee's Monument Sign Area" (and as further depicted on the attached **Exhibit "G"**), subject to the requirements of applicable law and

the terms, provisions and conditions hereof (the easements described in clauses (i)-(iii) in this Section 3.1 being collectively referred to herein as, the "**Applebee's Easements**");

TO HAVE AND TO HOLD the Applebee's Easements, together with all and singular the rights and appurtenances thereunto belonging unto respective grantee, its successors and assigns, and each Owner of the Rackspace Parcel does hereby bind itself and its successors, to warrant and forever defend the Applebee's Easements unto each respective grantee, its successors and assigns, against all persons whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under each Owner of the Rackspace Parcel but not otherwise.

The Owner of the Applebee's Parcel shall have the right, at its sole cost and expense, to modify the configuration of the parking areas located on Parking Tract 1, subject to the prior written consent of the Owner of the Rackspace Parcel (such consent not to be unreasonably withheld, conditioned or delayed) as to any material and substantial reconfiguration and as to the detailed plans and specifications and timeline therefor. The curb cuts connecting into the Access Road, in the locations depicted upon the Site Plan as "Curb Cut A" and "Curb Cut A-1", shall not be modified, without the prior written consent of the Owner of the Rackspace Parcel and the Owners of the Applebee's Parcel and the Olive Garden Parcel. The plans and specifications for the monument sign constructed in the Applebee's Monument Sign Area, including, but not limited to, the design, height, and size thereof shall be subject to the prior written approval of the Owner of the Rackspace Parcel, such approval not to be unreasonably withheld, conditioned or delayed so long as any such monument sign is otherwise in compliance with all applicable governmental requirements.

Subject to the foregoing requirements, the Owner of the Applebee's Parcel shall have the right, without the consent of the Owner of the Rackspace Parcel, to add additional parking stops, directional signage, light standards, safety features, and other surface parking improvements or traffic control improvements whether or not required by applicable law to Parking Tract 1, so long as any such additions do not otherwise modify the configuration of Parking Tract 1 and/or Curb Cuts, and otherwise comply with the purposes for which the foregoing easements are granted; provided that any material and substantial reconfigurations of the parking areas on Parking Tract 1 shall require the prior written consent of the Owner of the Rackspace Parcel, such consent not to be unreasonably withheld, conditioned or delayed.

3.2 **Parking, Access and Signage Easement for the Olive Garden Parcel**. The Owner of the Rackspace Parcel, as the Owner of Parking Tract 1, 2-A and 2-B, does hereby GRANT, SELL and CONVEY unto the Owner of the Olive Garden Parcel for the benefit of the Owner of the Olive Garden Parcel and its Occupants and Permittees, the following easements:

(i) an exclusive easement (except as set forth in Section 4.1 below), appurtenant to the Olive Garden Parcel, for ingress and egress by vehicular and pedestrian traffic to and from the Olive Garden Parcel over, upon and across Parking Tract 2-A and to and from the curb cuts connecting to the Access Road in the location depicted upon the Site Plan as "Curb Cut B" and "Curb Cut B-1" as the same exist and/or are modified from time to time, subject to the requirements of applicable law and the terms, provisions and conditions hereof;

(ii) an exclusive easement (except as set forth in Section 3.1(i) above and Section 4.1 below), appurtenant to the Olive Garden Parcel, for ingress and egress by vehicular and

pedestrian traffic to and from the Olive Garden Parcel over, upon and across Parking Tract 1 and Parking Tract 2-B, but excluding the Applebee's Monument Sign Area, and to and from the curb cuts connecting to the Access Road in the location depicted upon the Site Plan as "Curb Cut A" and "Curb Cut A-1" as the same exist and/or are modified from time to time, subject to the requirements of applicable law and the terms, provisions and conditions hereof;

(iii) an exclusive easement (except as set forth in Section 4.1 below), appurtenant to the Olive Garden Parcel, for vehicular parking upon the parking lot(s) constructed from time-to-time on the Parking Tracts 2-A and 2-B, but excluding the Applebee's Monument Sign Area, as the same exist and/or are modified from time to time, subject to the requirements of applicable law and the terms, provisions and conditions hereof; and

(iv) an exclusive easement (except as set forth in Section 4.1 below), appurtenant to the Olive Garden Parcel, for the purpose of constructing, maintaining, servicing, operating, inspecting, replacing, modifying, reconstructing and/or removing one (1) monument sign advertising a then-current business operated on the Olive Garden Parcel, upon the portion of Parking Tract 2-A depicted on the Site Plan as "Olive Garden Monument Sign Area" (and as further depicted on the attached **Exhibit "H"**), subject to the requirements of applicable law and the terms, provisions and conditions hereof (the easements described in clauses (i)-(iv) of this Section 3.2 being collectively referred to herein as, the "**Olive Garden Easements**");

TO HAVE AND TO HOLD the Olive Garden Easements, together with all and singular the rights and appurtenances thereunto belonging unto respective grantee, its successors and assigns, and each Owner of the Rackspace Parcel does hereby bind itself and its successors, to warrant and forever defend the Olive Garden Easements unto each respective grantee, its successors and assigns, against all persons whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under each Owner of the Rackspace Parcel but not otherwise.

The Owner of the Olive Garden Parcel shall have the right, at its sole cost and expense, to modify the configuration of the parking areas located on the Parking Tracts 2-A and 2-B, subject to the prior written consent of the Owner of the Rackspace Parcel (such consent not to be unreasonably withheld, conditioned or delayed) as to any material and substantial reconfiguration and as to the detailed plans and specifications and timeline therefor. The curb cuts connecting into the Access Road, in the locations depicted upon the Site Plan as "Curb Cut B" and "Curb Cut B-1", shall not be modified, without the prior written consent of the Owner of the Rackspace Parcel and the Owner of the Olive Garden Parcel. The plans and specifications for the monument sign constructed in the Olive Garden Monument Sign Area, including, but not limited to, the design, height, and size thereof shall be subject to the prior written approval of the Owner of the Rackspace Parcel, such approval not to be unreasonably withheld, conditioned or delayed so long as any such monument sign is in otherwise in compliance with all applicable governmental requirements.

Subject to the foregoing requirements, the Owner of the Olive Garden Parcel shall have the right, without the consent of the Owner of the Rackspace Parcel, to add additional parking stops, directional signage, light standards, safety features, and other surface parking improvements or traffic control improvements whether or not required by applicable law to Parking Tract 2-A and 2-B, so long as any such additions do not otherwise modify the

configuration of the foregoing described Parking Tract 2-A and 2-B and/or Curb Cuts, and otherwise comply with the purposes for which the foregoing easements are granted; provided that any material and substantial reconfigurations of the parking areas on Parking Tracts 2-A and 2-B shall require the prior written consent of the Owner of the Rackspace Parcel, such consent not to be unreasonably withheld, conditioned or delayed.

Notwithstanding anything contained in this Agreement to the contrary, including without limitation, any other provision of Section 3.1 and 3.2 above, the Owner of the Applebee's Parcel and the Owner of the Olive Garden Parcel shall have the right, upon mutual agreement of such parties, to permit cross-parking between their respective Parking Tracts for the benefit of their respective Occupants and their Permittees, on such terms, provisions and conditions as are mutually acceptable to the Owner of the Applebee's Parcel and the Owner of the Olive Garden Parcel; provided, however that such parties shall record in the Real Property Records of Bexar County, Texas a memorandum specifying the terms, provisions and conditions upon which such cross-parking is granted, which memorandum shall expressly reference this Agreement and the rights of such parties pursuant to this subsection, and further provided that such parties shall first obtain any and all consents to such proposed cross-parking that such parties deem necessary from their respective Occupants of the Applebee's Parcel and the Olive Garden Parcel.

3.3 **Parking and Access Easement for Benny's Parcel**. The Owner of the Rackspace Parcel, as the Owner of Parking Tract 3, does hereby GRANT, SELL and CONVEY unto the Owner of the Benny's Parcel for the benefit of the Owner of the Benny's Parcel and its respective Occupants and Permittees, the following easements:

(i) an exclusive easement (except as set forth in Section 4.1 below), appurtenant to the Benny's Parcel, for ingress and egress by vehicular and pedestrian traffic to and from the Benny's Parcel over, upon and across Parking Tract 3 and to and from the curb cut connecting to the Access Road in the location depicted upon the Site Plan as "Curb Cut C" as the same exists and/or is modified from time to time, subject to the requirements of applicable law and the terms, provisions and conditions hereof;

(ii) an exclusive easement (except as set forth in Section 4.1 below), appurtenant to the Benny's Parcel, for vehicular parking upon the parking lot(s) constructed from time-to-time on the Parking Tract 3, as the same exist and/or are modified from time to time, subject to the requirements of applicable law and the terms, provisions and conditions hereof; and

(iii) an exclusive easement, appurtenant to the Benny's Parcel, for the encroachment of any and all existing building and/or other non-parking lot related improvements that currently encroach onto Parking Tract 3 from the Benny's Parcel, as the same currently exist and any replacements thereof from time to time; provided, however, that any replacements thereof shall not be permitted to encroach to any greater extent onto Parking Tract 3 than as such encroachments exist as of the Effective Date of this Agreement (the easements described in clauses (i), (ii) and (iii) of this Section 3.3 being collectively referred to herein as, the "**Benny's Easements**").

TO HAVE AND TO HOLD the Benny's Easements, together with all and singular the rights and appurtenances thereunto belonging unto respective grantee, its successors and assigns,

and each Owner of the Rackspace Parcel does hereby bind itself and its successors, to warrant and forever defend the Benny's Easements unto each respective grantee, its successors and assigns, against all persons whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under each Owner of the Rackspace Parcel but not otherwise.

The Owner of the Benny's Parcel shall have the right, at its sole cost and expense, to modify the configuration of the parking areas located on the Parking Tract 3, subject to the prior written consent of the Owner of the Rackspace Parcel (such consent not to be unreasonably withheld, conditioned or delayed) as to any material and substantial reconfiguration and as to the detailed plans and specifications and timeline therefor. The curb cut connecting into the Access Road, in the locations depicted upon the Site Plan as "Curb Cut C", shall not be modified, without the prior written consent of the Owner of the Rackspace Parcel and the Owner of the Benny's Parcel.

Subject to the foregoing requirements, the Owner of the Benny's Parcel shall have the right, without the consent of the Owner of the Rackspace Parcel, to add additional parking stops, directional signage, light standards, safety features, and other surface parking improvements or traffic control improvements whether or not required by applicable law to Parking Tract 3, so long as any such additions do not otherwise modify the configuration of the foregoing described Parking Tract 3 and/or Curb Cuts, and otherwise comply with the purposes for which the foregoing easements are granted; provided that any material and substantial reconfigurations of the parking areas on Parking Tract 3 shall require the prior written consent of the Owner of the Rackspace Parcel, such consent not to be unreasonably withheld, conditioned or delayed.

The Applebee's Easements, Olive Garden Easements, and Benny's Easements are sometimes collectively referred to herein as the "**Parking and Access Easements**". Such Parking and Access Easements shall all be perpetual and shall run with the land and burden the Parking Tracts 1, 2-A, 2-B and 3 for the benefit of each applicable Outparcel, subject to the terms and conditions hereof.

3.4 **Easement –Access Road**. The Owner of the Rackspace Parcel, as the Owner of the Access Road, does hereby GRANT, SELL and CONVEY unto the Owner of each Outparcel, for the benefit of the Owner of each Outparcel and its respective Occupants and Permittees, a non-exclusive easement, appurtenant to each Outparcel, for ingress and egress by vehicular and pedestrian traffic to and from each Outparcel and/or Parking Tract over, upon and across Access Road (as it exists and is reconfigured and reconstructed from time to time) and to and from all curb cuts connecting each Outparcel and/or Parking Tract to the Access Road in the locations depicted upon the Site Plan as the same exist and/or are modified from time to time, subject to the requirements of applicable law and the terms, provisions and conditions hereof (the "**Access Road Easement**"). The term of the Access Road Easement shall commence upon the Completion Date and shall automatically terminate upon the dedication of the Access Road to the City of Windcrest or other applicable governmental authority for use by the public as a public right-of-way.

TO HAVE AND TO HOLD the Access Road Easement, together with all and singular the rights and appurtenances thereunto belonging unto respective grantee, its successors and assigns, and each Owner of the Rackspace Parcel does hereby bind itself and its successors, to warrant and forever defend the Access Road Easement unto each respective grantee, its

successors and assigns, against all persons whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under each Owner of the Rackspace Parcel but not otherwise.

3.5 **Intentionally omitted**.

3.6 **Limitations on Parking and Access Easements**. Nothing contained in this Agreement shall be construed as granting to any Owner of an Outparcel and/or their respective Occupants and Permittees (i) any right to park upon the Rackspace Parcel or any other property, other than Parking Tract 1, Parking Tract 2-A, Parking Tract 2-B and Parking Tract 3, as more particularly set forth above and subject to the terms, provisions and conditions hereof; (ii) any right to access any other portion of the Rackspace Parcel or any other property, other than Parking Tract 1, Parking Tract 2-A, Parking Tract 2-B and Parking Tract 3 and the Access Road (via the curb cuts specified above), subject to the terms, provisions and conditions hereof; (iii) the right to construct buildings or any other structures not consistent with the use thereof as a parking lot on Parking Tract 1, Parking Tract 2-A, Parking Tract 2-B or Parking Tract 3 or any other portion of the Rackspace Parcel.

3.7 **Construction of the Access Road, Curb Cuts, Landscape Buffer and Parking Tracts**. Windcrest shall construct, or cause to be constructed and completed, lien-free and at its sole cost and expense, and in compliance with all governmental requirements (without causing any code or regulation changes that would adversely affect any of the Outparcels), and shall cause to be open and ready for use by all Outparcel Owners and Occupants, and their respective Permittees on or before June 21, 2013, subject to extension for events of force majeure (the **"Completion Date"**), the following improvements, substantially in accordance with Plans and Specifications described on the attached **Exhibit I** (the **"Construction Work"**)(provided, however, that to the extent of any conflict between **Exhibit I** and **Exhibit F-1, F-2, F-3 and F-4** the latter shall control with respect to the Parking Tracts):

(i) The Access Road, a publicly dedicated street in the City of Windcrest, Texas, in approximately the location depicted on the Site Plan, together with City of Windcrest-required and -approved lighting along the Access Road;

(ii) Curb Cuts A, A-1, B, B-1 and C, connecting the Parking Tracts to the Access Road, in approximately the locations depicted on the Site Plan (specifically to be constructed to accommodate left and right turn lanes for vehicular traffic to and from each curb cut, provided that specifically designated turn lanes shall not be designated);

(iii) Widening of the portion of the Access Road between the Applebee's Parcel and the Olive Garden Parcel, extending from the IH-35 Frontage Road to the T intersection with the remaining portion of the Access Road, including a pedestrian crosswalk across the Access Road adjacent to Curb Cuts A-1 and B-1.

(iv) A landscape buffer along the Access Road, including, but not limited to, on the portions of the Parking Tracts bounding the Access Road, in the locations depicted on the Site Plan as "Landscape Buffer" (the **"Landscape Buffer"**); and

(v) Construction and installation of code-compliant parking lots on the Parking Tracts of a similar quality and condition as exist adjacent to the Outparcels as of the Effective Date hereof and as follows: (a) removal of all existing curbing and wheel stops, if any, from the existing configuration of the parking areas thereon, (b) filling, leveling and resurfacing, if necessary, of areas where such existing curbing and wheel stops are removed to the same level as the remainder of the existing parking lot thereon, (c) re-curbing, slurrycoating, restriping, and replacing of wheel stops in the parking lot to reconfigure the parking spaces thereon to substantially comply with the parking layouts shown on **Exhibit F-1, F-2, F-3 and F-4** attached hereto and made a part hereof for all purposes (the "Parking Layouts"), (d) installation of lighting along the boundary of the Access Road, in the locations depicted on **Exhibit F-1, F-2, F-3 and F-4** (provided that (i) the twelve (12) lights on six (6) light poles depicted on the Parking Tracts and the western boundary of the Access Road shall be two-way lights that illuminate both the Access Road and the adjacent Parking Tracts and (ii) the lighting shall provide a level of illumination equal to or better than the standard provided in the "Luminaire Schedule" on **Exhibit F-1, F-2, F-3 and F-4**), (e) repair (if necessary) of any existing lighting on Parking Tract 1 to insure the same is in good working order on the Completion Date.

After the lien-free, code-compliant completion of the Parking Tracts in accordance with **Exhibit F-1, F-2, F-3 and F-4**, the Owner(s) of each applicable Outparcel acknowledge and agree, on behalf of themselves and their respective Occupants, that Windcrest and Rackspace shall have no liability arising from the configuration of the Parking Layouts and Rackspace and Windcrest make no representation or warranty whatsoever, express or implied, that the Parking Layouts facilitate adequate flow of traffic within the Parking Tracts or to and from the Outparcels and the Access Road.

(vi) The undersigned, the City of Windcrest, in its capacity as the governmental authority charged with regulating the same, agrees that the Outparcels are currently in compliance with Windcrest zoning, planning, platting, and building codes and regulations, and that the Construction Work will not result in any requirement to be placed on the part of any Owner of an Outparcel to upgrade, change, or replat its Outparcel in any manner whatsoever, or to perform any new construction work relative to its Outparcel in order to become code/regulation compliant, as a result of the Construction Work.

In connection with all Construction Work to be performed under this Section 3.7, Windcrest and Rackspace shall diligently pursue the same to completion and use their reasonable efforts to minimize any material disturbances and disruptions to the Occupants and Permittees of the Outparcels; provided, however that the parties acknowledge and agree that, despite such efforts, there may be unavoidable temporary periods during such Construction Work when the previously-existing access and parking may not be open and available to all Outparcel Owners and Occupants, and their respective Permittees. During any such closures of the previously-existing access and parking areas, each Outparcel shall utilize its respective access directly to the IH-35 Frontage Road and/or Walzem Road, as applicable, and reasonable and convenient replacement parking provided by Rackspace and Windcrest on the Rackspace Parcel, in addition to the parking areas on each respective Outparcel. Notwithstanding the foregoing, at no time shall the portion of the Access Road that runs between the Applebee's Parcel and the Olive Garden Parcel and provides access from the I-35 Frontage Road to the Applebee's Parcel and the Olive Garden Parcel be closed or

materially impaired without Rackspace and Windcrest providing reasonably convenient alternate access to and from such Parcels and the I-35 Frontage Road. During the Construction Work, Windcrest and Rackspace shall deliver to all Outparcel Owners and Occupants notice of any anticipated access and/or parking closures and/or impairments, and showing the temporary alternate access and parking arrangements available to the Outparcels' Occupants and Permittees to mitigate same. Windcrest and the Rackspace shall regularly communicate with all Outparcel Occupants regarding updates to the foregoing, including projected timelines for any anticipated closures and or inconveniences, and shall confirm to such parties that all such alternate access and parking described above is available to all affected Outparcel Owners and Occupants, and their respective Permittees, before it permits any such closures of the previously-existing access and parking areas to occur.

Within sixty (60) days after the Completion Date, Windcrest and Rackspace shall cause to be prepared and recorded, an amendment to this Agreement ("**Amendment**") (i) attaching the final legal descriptions, as reasonably approved by the Owners of the Outparcels, of the Access Road, each Parking Tract, the Applebee's Monument Sign Area, and the Olive Garden Monument Sign Area, and (ii) attaching an update Site Plan and Detailed Site Plans matching the foregoing legal descriptions, and showing the final Parking Layouts and the exact locations of the Curb Cuts and Landscape Buffer, as constructed.

3.8 **Easement for Pre-Existing Utilities**. The Owner of each Parcel within the Property does hereby GRANT, SELL and CONVEY to each other Owner of each Parcel within the Property, for the benefit of each such Owner and its respective Occupants and Permittees, a non-exclusive easement, appurtenant to each Parcel within the Property, for the maintenance and operation of any utility lines that currently exist on any Parcel within the Property and serve another Parcel within the Property as of the date of this Agreement (if any), including any similarly convenient replacements thereof in the event of condemnation or casualty; TO HAVE AND TO HOLD the foregoing utility easement, together with all and singular the rights and appurtenances thereunto belonging unto respective grantee, its successors and assigns, and each respective grantor does hereby bind itself and its successors, to warrant and forever defend the foregoing utility easement unto each respective grantee, its successors and assigns, against all persons whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under each respective grantor but not otherwise.

3.9 **Permitted Exceptions**. The easements described herein are conveyed and reserved subject only to the restrictions, easements, utility lines, or other matters or easements affecting the Property as specified described on **Exhibit J** attached hereto (collectively, the "**Permitted Exceptions**"). All other rights of Windcrest, Rackspace (including, but not limited to those under the Rackspace Lease), and of any mortgage loans or deeds of trust now or hereafter obtained by either Windcrest or Rackspace, secured in whole or in part by any portion of the Parking Tracts and/or the Property, shall be subject to and subordinate to this Agreement.

3.10 **Retention of Ownership**. Subject to the terms, provisions, conditions and superior exclusive easement and use rights herein conveyed and described, Windcrest and Rackspace herein retain, reserve and shall continue to enjoy fee ownership and leasehold ownership, as applicable, and the surface and subsurface, of its dominant fee and leasehold estate in the Rackspace Parcel, as

applicable, including easement areas, for any and all purposes which do not unreasonably interfere with and prevent the use of the Parking and Access Easements as created and set forth herein, and for the benefit of itself, and its respective successors and assigns, the right to use the surface and subsurface of portions of the Rackspace Parcel for any purpose (provided that any use of the Parking Tracts by Windcrest and/or Rackspace shall be limited to pre-existing utilities as set forth in Section 3.8 above), including as may be reasonably necessary for the installation, operation, maintenance, repair, replacement, removal and relocation of underground storm sewer lines, sanitary sewer pipes, water and gas mains, electric power lines, telephone and cable T.V. lines, and other like uses (collectively "**Utilities**") which do not unreasonably interfere with and prevent the use of the Parking and Access Easements; provided that any damage caused by Rackspace or Windcrest to any part of the Parking Tracts (or any of the improvements thereon) in the conduct of any such activity shall be repaired (or replaced) at the sole cost and expense of Windcrest or Rackspace as soon as reasonably possible to the condition existing prior to the conduct of any such activity.

3.11 **No Further Encumbrances-Parking Tracts/Outparcels.** It is agreed that Rackspace and/or Windcrest, after the Effective Date hereof, shall not further encumber the Parking Tracts and/or Olive Garden Monument Sign Area and/or Applebee's Monument Sign Area in any manner whatsoever, without prior written consent of the applicable Outparcel Owners.

ARTICLE 4.

Maintenance and Repair.

4.1 **Maintenance and Repair of the Access Road and Landscape Buffers**. The Owner of the Rackspace Parcel shall maintain and repair or cause to be maintained and repaired, at its sole cost and expense, the Access Road, so as to keep improved portions of the Access Road, as may exist from time-to-time, at all times open and operational and in a safe, sightly, good and functional condition to the same or similar standard as the other public streets serving the Rackspace Parcel; provided, however, that (i) nothing contained herein shall be deemed to obligate Rackspace to construct any new improvements on the remainder of the Rackspace Parcel and/or redevelop the remainder of the Rackspace Parcel (or any portion thereof); and (ii) Rackspace shall dedicate the Access Road to the City of Windcrest or other applicable governmental entity, whereupon such maintenance and repair obligations shall be transferred to the appropriate governmental entity.

The Owner of the Rackspace Parcel shall also maintain and repair or caused to be maintained or repaired, at its sole cost and expense, in a sightly and well kept manner, all Landscape Buffers, including, but not limited to, any portion of any Landscape Buffer on any of the Parking Tracts. The landscaping installed and maintained in the Landscape Buffers shall be routinely maintained in a safe, sightly, well kept and neat manner, and so that no landscaping elements materially block the visibility of any buildings on the Outparcels, signage on any Outparcel, or signage on any signage area or easement described herein.

Notwithstanding anything herein to the contrary, the Owner of the Rackspace Parcel, its Occupants, Permittees and their respective employees, agents, or independent contractors shall have

the right to ingress and egress across reasonable portions of the Parking Tracts to perform its maintenance obligations under this Section 4.1; provided that the Owner of the Rackspace Parcel shall hold harmless, indemnify and defend each Outparcel Owner, and their Occupants and respective Permittees, against any claims resulting from any such entry on to the Parking Tracts pursuant to this Section 4.1.

4.2 **Maintenance and Repair of Parking Tracts and Curb Cuts.**

(i) From and after the Completion Date, the Owner of the Applebee's Parcel shall (a) cause to be maintained and repaired, at its sole cost and expense, Parking Tract 1, excluding the portion of the Landscape Buffer located thereon, but including its monument sign on the Applebee's Monument Sign Area and Curb Cuts A and Curb Cut A-1, so as to keep improved portions of the same, as may exist from time-to-time, at all times in a safe, sightly, good and functional condition to the same standard as the driveways, parking areas, and improvements on the remainder of the Rackspace Parcel, (b) insure Parking Tract 1 in accordance with Article 6 below, and (c) beginning on the date upon which ad valorem taxes are assessed against Parking Tract 1 (but not earlier than the date that Rackspace begins paying ad valorem taxes under the Rackspace Lease on the remainder of the Rackspace Parcel other than the Parking Tracts and the Access Road), pay all ad valorem taxes assessed as to Parking Tract 1 after such date (if and when the same become due and payable), as if the Owner of the Applebee's Parcel was in fact the Owner of Parking Tract 1 (for ad valorem tax purposes only).

(ii) From and after the Completion Date, the Owner of the Olive Garden Parcel shall (a) cause to be maintained and repaired, at its sole cost and expense, Parking Tract 2-A, excluding the portion of the Landscape Buffer located thereon, but including its monument sign on the Olive Garden Monument Sign Area and Curb Cut B and Curb Cut B-1, so as to keep improved portions of the same, as may exist from time-to-time, at all times in a safe, sightly, good and functional condition to the same standard as the driveways, parking areas, and improvements on the remainder of the Rackspace Parcel, (b) insure Parking Tract 2-A in accordance with Article 6 below, and (iii) beginning on the date upon which ad valorem taxes are assessed against Parking Tract 2-A (but not earlier than the date that Rackspace begins paying ad valorem taxes under the Rackspace Lease on the remainder of the Rackspace Parcel other than the Parking Tracts and the Access Road), pay all ad valorem taxes on Parking Tract 2-A (if and when the same become due and payable), as if the Owner of the Olive Garden Parcel was in fact the Owner of Parking Tract 2-A (for ad valorem tax purposes only).

(iii) From and after the Completion Date, the Owner of the Olive Garden Parcel shall (a) cause to be maintained and repaired, at its sole cost and expense, Parking Tract 2-B, excluding the portion of the Landscape Buffer located thereon and Applebee's Monument Sign Area thereon, so as to keep improved portions of the same, as may exist from time-to-time, at all times in a safe, sightly, good and functional condition to the same standard as the driveways, parking areas, and improvements on the remainder of the Rackspace Parcel, (b) insure Parking Tract 2-B in accordance with Article 6 below, and (c) beginning on the date upon which ad valorem taxes are assessed against Parking Tract 2-B (but not earlier than the date that Rackspace begins paying ad valorem taxes under the Rackspace Lease on the remainder of the Rackspace Parcel other than the Parking Tracts and the Access Road), pay all ad valorem taxes on Parking Tract 2-B (if and when

the same become due and payable), as if the Owner of the Olive Garden Parcel was in fact the Owner of Parking Tract 2-B (for ad valorem tax purposes only).

(iv) From and after the Completion Date, the Owner of the Benny's Parcel shall (a) cause to be maintained and repaired, at its sole cost and expense, Parking Tract 3, excluding the portion of the Landscape Buffer located thereon, but including Curb Cut C, so as to keep improved portions of the same, as may exist from time-to-time, at all times in a safe, sightly, good and functional condition to the same standard as the driveways, parking areas, and improvements on the remainder of the Rackspace Parcel, (b) insure Parking Tract 3 in accordance with Article 6 below, and (c) beginning on the date upon which ad valorem taxes are assessed against Parking Tract 3 (but not earlier than the date that Rackspace begins paying ad valorem taxes under the Rackspace Lease on the remainder of the Rackspace Parcel other than the Parking Tracts and the Access Road), pay all ad valorem taxes on Parking Tract 3 (if and when the same become due and payable), as if the Owner of the Benny's Parcel was in fact the Owner of Parking Tract 3 (for ad valorem tax purposes only).

4.3 **Maintenance and Repair of Rackspace Sign Parcel**. The Outparcel Owners acknowledge that, following the dedication of the Access Road, the Owner of the Rackspace Parcel shall continue to own that certain sign parcel located between the Access Road and the Applebee's Parcel, depicted on the Site Plan as "Rackspace Sign Parcel". The Owner of the Rackspace Parcel agrees that the Rackspace Sign Parcel shall only be used for landscaping and for operating and maintaining the existing monument sign thereon (the "**Existing Monument Sign**"), which currently contains directional signage. The Owner of the Rackspace Parcel agrees to maintain and repair or caused to be maintained or repaired, at its sole cost and expense, in a sightly and well kept manner, the Rackspace Sign Parcel, including, but not limited to, maintaining any landscaping located thereon in a safe, sightly, well kept and neat manner according to the same standards set forth in Section 4.1 herein for Landscape Buffers, and maintaining the Existing Monument Sign in its current condition, unless the Owner of the Rackspace Parcel elects to remove such Existing Monument Sign and replace same with landscaping. In addition, in the event that the Owner of the Rackspace Parcel elects, in its sole discretion, to remodel and/or upgrade the Existing Monument Sign (which shall only be done without materially increasing its size or height unless reasonably approved by the Owner of the Applebee's Parcel), then the Owner of the Rackspace Parcel shall also include thereon, at its sole cost and expense, directional signage for (i) parking for the Olive Garden Parcel and (ii) parking for the Applebee's Parcel.

ARTICLE 5.

Use Restrictions.

5.1 Prohibited Uses. No portion of the Property shall be use or occupied for the following uses:

(i) Any noise, vibration, litter, odor (obnoxious or toxic), dust, dirt or other activity which may constitute a public or private nuisance;

(ii) Any unusual firing, explosive or other damaging or dangerous hazards;

(iii) Any factory use, warehouse operation, processing or rendering plant, or any assembling, manufacturing, distilling, refining, smelting, industrial, agriculture, drilling or mining operation;

(iv) Any trailer court, mobile home park, lot or showroom for sale of new or used motor vehicles, trailers or mobile homes, labor camp, junk yard, stockyard or animal raising;

(v) Any dumping, disposal, incineration or reduction of garbage or refuse other than handling or reducing such waste if produced on the premises from authorized uses and if handled in a reasonably clean and sanitary manner;

(vi) Any commercial laundry or dry cleaning plant, or laundromat; provided, however, that a facility for drop-off and pick-up of dry cleaning and laundry that is dry-cleaned or laundered off-site shall be permitted; and provided, further, that the foregoing prohibition shall not apply to a laundry facility on the Rackspace Parcel that is for the primary purpose of serving employees;

(vii) Any automobile, truck, trailer or other motor vehicle body, fender or other repair work;

(viii) Any automobile, truck, trailer or other motor vehicle painting or customizing work;

(ix) Any cemetery, mortuary or crematorium;

(x) Any pool or billiard. Establishment, amusement center or game room, bowling alley, amusement park or gallery, carnival, sporting event or other sports activity or shooting gallery; provided that use as a pool or billiard establishment, amusement center or game room shall not be prohibited if conducted as an integral portion of a restaurant;

(xi) Any second hand store, surplus store or flea market;

(xii) Any drug rehabilitation center, "halfway" house or massage parlor;

(xiii) Any so-called "off-track betting" operation; or

(xiv) Any sale or display of pornographic materials, adult book store, or adult entertainment use or any other manner or use which is inconsistent with a family entertainment center and retail destination.

ARTICLE 6.

Insurance and Indemnity

6.1 **Insurance**. From and after the Completion Date, each Owner of an Outparcel shall maintain, or cause to be maintained, as to its respective appurtenant Parking Tract and each signage

easement area located therein (i.e., the Applebee's Parcel Owner for Parking Tract 1 and the Applebee's Monument Sign Area, the Olive Garden Parcel Owner for Parking Tract 2-A, Parking Tract 2-B, and the Olive Garden Monument Sign Area, and the Benny's Parcel Owner for Parking Tract 3), public liability insurance insuring against claims on account of lost life, bodily injury or property damage that may arise from, or be occasioned by the condition, use or occupancy of its respective Outparcel and its respective Parking Tract(s) described herein, or caused by such Owner, its Occupants, and the respective Permittees of such Owner and Occupant or caused by those persons for whose acts and omissions such Owner, its Occupants, and their respective Permittees are legally liable. Each Owner of an Outparcel shall each obtain insurance policies, according to the provisions hereof, covering its respective Outparcel and its respective Parking Tract(s) described herein from a reputable insurance company or companies qualified to do business in the State of Texas; and each such policy of insurance shall have limits for bodily injury and property damage in amounts of $3,000,000.00 per occurrence and $3,000,000.00 in the aggregate. Such insurance may be carried under a "blanket" policy or "blanket" policies covering other properties of each respective party, and may be subject to such self-insured retentions as a Party may desire. Each Owner of an Outparcel shall, upon written request from Rackspace, furnish to Rackspace one or more certificates of insurance evidencing the existence of the insurance required above. With respect to the right of the Olive Garden Parcel Owner, its Occupants, and their respective Permittees to use Parking Tract 1 in accordance with Section 3.2 above, the Owner of the Applebee's Parcel shall name the Owner, and any Occupants and Lenders, of the Olive Garden Parcel, as additional insured parties on insurance policies obtained by it in compliance with the foregoing insurance requirements pertaining to Parking Tract 1. All insurance policies required in this paragraph shall contain provisions which include Rackspace as an "additional insured".

The Owner of the Rackspace Parcel agrees that, until such time as the Access Road is dedicated to the public, it will maintain, or cause to be maintained, as to the Access Road, public liability insurance insuring against claims on account of lost life, bodily injury or property damage that may arise from, or be occasioned by the condition, use or occupancy of the Access Road, or caused by such Owner, its Occupants, and the respective Permittees of such Owner and Occupant or caused by those persons for whose acts and omissions such Owner, its Occupants, and their respective Permittees are legally liable. The Owner of the Rackspace Parcel shall obtain insurance policies, according to the provisions hereof, covering the Access Road from a reputable insurance company or companies qualified to do business in the State of Texas; and each such policy of insurance shall have limits for bodily injury and property damage in amounts of $3,000,000.00 per occurrence and $3,000,000.00 in the aggregate. Such insurance may be carried under a "blanket" policy or "blanket" policies covering other properties of each respective party, and may be subject to such self-insured retentions as a Party may desire. The Owner of the Rackspace Parcel shall, upon written request from any Owner of an Outparcel, furnish to such Owner one or more certificates of insurance evidencing the existence of the insurance required above. All insurance policies required in this paragraph shall contain provisions which include GVD and MM2 each as an "additional insured".

6.2 **Indemnities**.

(i) GVD and MM2 ("**Indemnitor**") agree to indemnify, defend, and hold harmless the Rackspace Parcel Owner from and against any loss, cost, damage, attorneys' fees, expenses, or claims, actual or threatened, except to the extent caused by the gross negligence or

willful misconduct of the Owner of the Rackspace Parcel, its Occupants and any Permittees, arising from (i) injury to person or property occurring on an Outparcel's appurtenant Parking Tract(s) (i.e., the Applebee's Parcel Owner for Parking Tract 1, the Olive Garden Owner for Parking Tract 2-A and Parking Tract 2-B, and the Benny's Parcel Owner for Parking Tract 3) attributable to the use by such Owner of an Outparcel, its Occupants and their respective Permittees of the Parking and Access Easements from and after the Completion Date, and/or (ii) a breach or default of any provision of this Agreement by such Owner of an Outparcel.

(ii) From and after the Completion Date, the Owner of the Olive Garden Parcel agrees to indemnify, defend, and hold harmless the Owner of the Applebee's Parcel, its Occupants and Permittees, from and against any loss, cost, damage, attorneys' fees, expenses, or claims, actual or threatened, except to the extent caused by the gross negligence or willful misconduct of the Owner of the Applebee's Parcel, its Occupants and any Permittees, arising from (i) injury to person or property occurring on the Parking Tract 1 attributable to the use by the Owner of the Olive Garden Parcel, its Occupants and their respective Permittees of Parking Tract 1 as permitted by Section 3.2(ii) herein, but only to the extent not covered by the insurance required to be maintained by the Owner of the Applebee's Parcel for Parking Tract 1 pursuant to Section 6.1 herein. From and after the Completion Date, the Owner of the Applebee's Parcel agrees to indemnify, defend, and hold harmless the Owner of the Olive Garden Parcel, its Occupants and Permittees, from and against any loss, cost, damage, attorneys' fees, expenses, or claims, actual or threatened, except to the extent caused by the gross negligence or willful misconduct of the Owner of the Olive Garden Parcel, its Occupants and any Permittees, arising from (i) injury to person or property occurring on the Parking Tract 1 attributable to the use by the Owner of the Applebee's Parcel, its Occupants and their respective Permittees of Parking Tract 1.

(iii) From and after the Completion Date, the Owner of the Applebee's Parcel agrees to indemnify, defend, and hold harmless the Owner of the Olive Garden Parcel, its Occupants and Permittees, from and against any loss, cost, damage, attorneys' fees, expenses, or claims, actual or threatened, except to the extent caused by the gross negligence or willful misconduct of the Owner of the Olive Garden Parcel, its Occupants and any Permittees, arising from (i) injury to person or property occurring on the Parking Tract 2-B attributable to the use by the Owner of the Applebee's Parcel, its Occupants and their respective Permittees of Parking Tract 2-B as permitted by Section 3.1(i) herein, but only to the extent not covered by the insurance required to be maintained by the Owner of the Olive Garden Parcel for Parking Tract 2-B pursuant to Section 6.1 herein. From and after the Completion Date, the Owner of the Olive Garden Parcel agrees to indemnify, defend, and hold harmless the Owner of the Applebee's Parcel, its Occupants and Permittees, from and against any loss, cost, damage, attorneys' fees, expenses, or claims, actual or threatened, except to the extent caused by the gross negligence or willful misconduct of the Owner of the Applebee's Parcel, its Occupants and any Permittees, arising from (i) injury to person or property occurring on the Parking Tract 2-B attributable to the use by the Owner of the Olive Garden's Parcel, its Occupants and their respective Permittees of Parking Tract 2-B.

(iv) Until such time as the Access Road becomes a publicly dedicated street, Rackspace agrees to indemnify, defend, and hold harmless the Owner of each Outparcel from and against any loss, cost, damage, attorneys' fees, expenses, or claims, actual or threatened,

except to the extent caused by the gross negligence or willful misconduct of an Owner of an Outparcel, its Occupants and any Permittees, arising from (i) injury to person or property occurring on the Access Road attributable to the use by the Owner of the Rackspace Parcel, its Occupants and their respective Permittees, (ii) arising from injury to person or property occurring on the Parking Tracts prior to the Completion Date, and/or arising at any time from injury to person or property occurring on the Parking Tracts and/or the Outparcels themselves and attributable to the use by the Owner of the Rackspace Parcel, its Occupants and their respective Permittees, and/or (iii) a breach or default of any provision of this Agreement by the Owner of the Rackspace Parcel.

ARTICLE 7.

Remedies

7.1 **Self Help and Other Remedies**. If any Party or Person obligated hereunder defaults in the performance of its obligations hereunder (including, but not limited to, any default pertaining to the maintenance and repair obligations applicable to the Parking Tracts and Curb Cuts by the Owner of the Applebee's Parcel, the Owner of the Olive Garden Parcel, and/or the Owner of the Benny's Parcel as set forth in Section 4.2 herein), and the default is not cured within thirty (30) days following delivery of written notice to such defaulting Party (provided that said 30-day cure period is waived and not applicable if the default is of a nature so as to create an emergency affecting (a) the safety of any Person, (b) impending damage to any Property, or (c) the immediate denial of access to any Parking Tract or Property) then the non-defaulting Party or obligated Person shall have the right to (i) perform such obligation on behalf of the defaulting Party or Person, in which event such defaulting Party or Person shall reimburse such non-defaulting Party or Person for all amounts expended by the non-defaulting Party or Person on behalf of the defaulting Party, together with interest thereon at the lesser of twelve percent (12%) per annum, or the maximum amount permitted by law from the date the amounts are expended until the date repaid; and/or (ii) exercise any other rights or remedies available to the non-defaulting Party or Person either at law or in equity. Notwithstanding the foregoing, in the event of a breach or default by any Owner of an Outparcel or any Person in its performance of its obligations hereunder, in no event shall such default result in a termination of this Agreement, and/or any impairment of the Access Road Easement and/or any Parking and Access Easements benefitting any Outparcel, including, without limitation, the Outparcel of any defaulting Owner. Furthermore, in no event shall Windcrest or Rackspace have the right to cut off or impair any defaulting Party's access to the Access Road and/or any applicable Parking Tract(s) by erecting a fence or other barrier along the common boundary of the Rackspace Parcel and the applicable Outparcel(s) and/or their appurtenant Parking Tract(s).

7.2 **Injunctive Relief**. In the event of a breach by any party hereto of any obligation of such party under this Agreement, subject to the provisions of Section 7.1 above, the non-defaulting Party shall be entitled to injunctive relief mandating compliance herewith, and shall be entitled to obtain a decree specifically enforcing the performance of the obligations created hereunder. The undersigned hereby acknowledge and stipulate the inadequacy of legal remedies and irreparable harm which would be caused by the breach of this Agreement, and such non-defaulting Party shall, subject to the provisions of Section 7.1 above, be entitled to relief by any and all other available legal and equitable remedies from the consequences of such breach. Any costs and reasonable

attorney's fees incurred in the preparation and prosecution of such action or proceeding shall be paid by the non-prevailing Party in any such action or proceeding.

7.3 **Non-Waiver**. No delay or omission of any party hereto in the exercise of any rights created hereunder shall impair such right, or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of an event of default hereunder. A waiver by any party hereto of a breach of, or default in, any of the terms and conditions of this Agreement by the other party shall not be construed to be a waiver of any subsequent breach thereof or of any other provision of this Agreement. Except as otherwise specifically provided in this Agreement, no remedy provided in this Agreement shall be exclusive, but instead all remedies shall be cumulative with all other remedies provided for in this Agreement and all other remedies at law or in equity which are available to the parties hereto.

ARTICLE 8.

Notices

8.1 **Notices**. All notices, demands, statements, and requests (collectively the "Notice") required or permitted to be given under this Agreement must be in writing and shall be deemed to have been properly given or served as of the date hereinafter specified: (i) on the date of personal service upon the Party to whom the notice is addressed or if such Party is not available the date such notice is left at the address of the Party to whom it is directed, (ii) on the date the notice is postmarked by the United States Post Office, provided it is sent prepaid, registered or certified mail, return receipt request, and (iii) on the date the notice is delivered by a courier services (including Federal Express, Express Mail, Lone Star or similar operation) to the address of the Party to whom it is directed, provided it is sent prepaid, return receipt requested. The address of the signatories to this Agreement is set forth below:

If to Rackspace:	Rackspace Hosting Attn: General Counsel 5000 Walzem San Antonio, Texas 78218 Telephone No.: 210-312-4700 Fax No.: 210-312-4848
With a copy to:	Steve Golden Golden Steves Cohen & Gordon, LLP 300 Convent Street, Suite 2600 San Antonio, Texas 78205 Telephone No.: (210) 745 3700 Fax No.: (210) 745 3737

If to GVD: GVD Commercial Properties, Inc.
Attn: David A. Case, CFO
1915-A East Katella Avenue
Orange, CA 92867
Telephone No.: (714) 639-2131
Fax No.: (714) 633-9602

If to MM2: Monte Mac No. 2
Attn: David A. Case, CFO
1915-A East Katella Avenue
Orange, CA 92867
Telephone No.: (714) 639-2131
Fax No.: (714) 633-9602

ARTICLE 9.

General Provisions

9.1 **Binding Effect**. The Parties hereby agree that (i) the terms, provisions and conditions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective Permittees, as well as the successors and assigns of such Persons; and (ii) the easements and restrictive covenants shall be appurtenant to and for the benefit of all the Owners and their successors and assigns and shall run with the land for the time periods set forth herein. This Agreement shall be construed in accordance with the laws of the State of Texas and all obligations hereunder are performable in Bexar County, Texas. Rackspace's interest under this Agreement and its rights, obligations and duties hereunder, shall be fully assignable by Rackspace to any assignee of all or substantially all of the Rackspace's interest under the Rackspace Lease, or sublessee of all or substantially all of the Rackspace Parcel under the Rackspace Lease, but in no event shall Rackspace be released from any of its liabilities or obligations under this Agreement prior to the occurrence of the Completion Date. Upon the expiration or earlier termination of the Rackspace Lease, if Rackspace does not acquire the Rackspace Parcel, as more particularly set forth under its option to do so under the Rackspace Lease, then Rackspace shall no longer be deemed an Owner of the Rackspace Parcel, and its successor in interest as to the Rackspace Parcel shall thereafter be deemed the Rackspace Parcel Owner for all purposes hereunder. Further, it is agreed that any and all rights and/or options owned by Rackspace to acquire ownership of the Rackspace Parcel under the Rackspace Lease, or under any other agreements, shall be and remain expressly subordinate to the terms and conditions of this Agreement.

9.2 **Partial Invalidity**. If any term, covenant or condition of this Agreement or the application of it to any Person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant or condition to Persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and shall be enforced to the extent permitted by law.

9.3 **Captions**. The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants or conditions contained herein.

9.4 **Gender**. In construing the provisions of this Agreement and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

9.5 **Relationship of the Parties**. Nothing contained herein shall be construed to make the parties hereto partners or joint venturers, or render any of such parties liable for the debts or obligations of the other party hereto.

9.6 **Amendment**. This Agreement may be canceled, changed, modified or amended in whole or in part only by the written and recorded agreement of all then current Owners. In no event shall any amendment of this Agreement ever require the consent or joinder of any one or more of the agents, patrons, customers, employees, licensees or invitees of the Property.

9.7 **Term**. This Agreement and the easements, rights, obligations and liabilities created hereby shall encumber the Property for a period of fifty (50) years, or such lesser period if and to the extent a lesser period is required by applicable law, and thereafter the terms hereof shall be renewed automatically for successive ten (10) year periods unless all Owners and all parties owning at that time any security interest in any of the Parcels execute and record in the Bexar County, Texas, real estate records at any time a statement terminating this Agreement.

9.8 **No Dedication**. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property to the general public or for the general public or for any public purpose whatsoever, it being the intention that this Agreement shall be strictly limited to and for the purposes herein expressed. This Agreement is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not specifically benefited by the terms and provisions hereof, nor are any easement rights granted to a party hereunder assignable to any third party.

Notwithstanding the foregoing, (i) nothing contained in this Agreement shall prohibit the Rackspace Parcel Owner, or its successors, from dedicating all or any part of the Rackspace Parcel, including, without limitation, the Access Road, but excluding the Parking Tracts, to an appropriate governmental entity, the effect of which would create a public street on the Rackspace Parcel so dedicated, with maintenance and repair responsibilities transferring to the appropriate governmental entity, and (ii) nothing contained in this Agreement shall prohibit the Rackspace Parcel Owner, or its successors, from transferring all or any part of its maintenance and repair responsibilities hereunder to a property manager or a property owner's association, with maintenance and repair responsibilities transferring to the same, but the foregoing shall not relieve the Rackspace Parcel Owner from its obligations to cause the same to be performed as set forth herein.

9.9 **Outparcels Not Responsible For Costs**. Except as otherwise set forth herein and except for the fees of each party's attorneys, engineers, consultants engaged by each party which

shall be the responsibility of each respective party, in no event shall any Owner of a Outparcel be liable or responsible for the construction costs associated with the Construction Work prior to the Completion Date; provided, however that each Outparcel Owner shall be obligated to pay for certain post-Completion Date costs and expenses pertaining to the Parking Tracts, as specifically and expressly as set forth in Section 4.2 herein.

9.10 **Counterparts**. This Agreement may be executed in any number of counterparts and each such counterpart hereof shall be deemed to be an original instrument, but all of such counterparts shall constitute but one Agreement.

9.11 **Attorneys Fees**. In the event any legal action or proceeding for the enforcement of any right or obligations herein contained is commenced, the prevailing party in such action or proceeding shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

[Separate Signature Pages Follow]

EXECUTED to be effective as of the Effective Date.

RACKSPACE US, INC.
a Delaware corporation

By: _____
Name: _____
Title: _____

THE STATE OF TEXAS §
§
COUNTY OF _____ §

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, the _____ of Rackspace US, Inc., a Delaware corporation, on behalf of said corporation.

_____
Notary Public in and for
The State of Texas

[Signature Pages Continue]

GVD COMMERCIAL PROPERTIES, INC.
a California corporation

By: _____
Name: David A. Case
Title: CFO

STATE OF CALIFORNIA) SS
COUNTY OF ORANGE)

On _____, 2012, before me, _____ (Notary Public) personally appeared David A. Case, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

MONTE MAC NO. 2,
a California limited partnership

By: GVD Investments, Inc.,
a California corporation,
its General Partner

By: _____
Name: David A. Case
Title: CFO

STATE OF CALIFORNIA) SS
COUNTY OF ORANGE)

On _____, 2012, before me, _____ (Notary Public) personally appeared David A. Case, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

After recording return to:

Smita Bhakta
Golden Steves Cohen & Gordon, LLP
300 Convent Street, Suite 2600
San Antonio, Texas 78205

Joinder of Windcrest

Windcrest Economic Development Corporation ("**Windcrest**") is the fee simple owner of the Rackspace Parcel, which is leased by Windcrest to Rackspace pursuant to that certain Ground Lease Agreement dated August 2, 2007, as amended from time to time. Windcrest joins in the execution of this Agreement as the current fee simple owner of the Rackspace Parcel for the purpose of subjecting the Rackspace Parcel to the terms, provisions and conditions of this Agreement.

WINDCREST:

WINDCREST ECONOMIC DEVELOPMENT CORPORATION

By: _____
Name: _____
Title: _____

THE STATE OF TEXAS §
§
COUNTY OF _____ §

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, the _____ of Windcrest Economic Development Corporation, on behalf of said corporation.

_____
Notary Public in and for
the State of Texas

Joinder of Tenant
[Applebee's Parcel]

NEIGHBORHOOD RESTAURANT PARTNERS, LLC, a Delaware limited liability company ("Applebee's Tenant") is the tenant of the Applebee's Parcel, which is leased by MM2 to Applebee's Tenant pursuant to that certain Lease Agreement by and between MM2 and Applebee's Tenant, as amended from time to time. Applebee's Tenant joins in the execution of this Agreement as the current tenant of the Applebee's Parcel for the purpose of subjecting the Applebee's Parcel to the terms, provisions and conditions of this Agreement.

APPLEBEE'S TENANT:

NEIGHBORHOOD RESTAURANT PARTNERS, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

THE STATE OF _____ §
§
COUNTY OF _____ §

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, the _____ of **NEIGHBORHOOD RESTAURANT PARTNERS, LLC, a Delaware limited liability company**, on behalf of said limited liability company.

_____
Notary Public in and for
the State of _____

Joinder of Tenant
[Olive Garden Tenant]

DARDEN SW, LLC, a Florida limited liability company ("Olive Garden Tenant") is the tenant of the Olive Garden Parcel, which is leased by GVD to Olive Garden Tenant pursuant to that certain Lease Agreement by and between GVD and Olive Garden Tenant, as amended from time to time. Olive Garden Tenant joins in the execution of this Agreement as the current tenant of the Olive Garden Parcel for the purpose of subjecting the Olive Garden Parcel to the terms, provisions and conditions of this Agreement.

OLIVE GARDEN TENANT:

DARDEN SW, LLC,
a Florida limited liability company

By: GMRI, Inc.,
Its Manager

By: _____
Name: _____
Title: _____

THE STATE OF _____ §
§
COUNTY OF _____ §

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, the _____ of **GMRI, Inc., the Manager of Darden SW, LLC, a Florida limited liability company**, on behalf of said corporation and limited liability company.

_____
Notary Public in and for
the State of _____

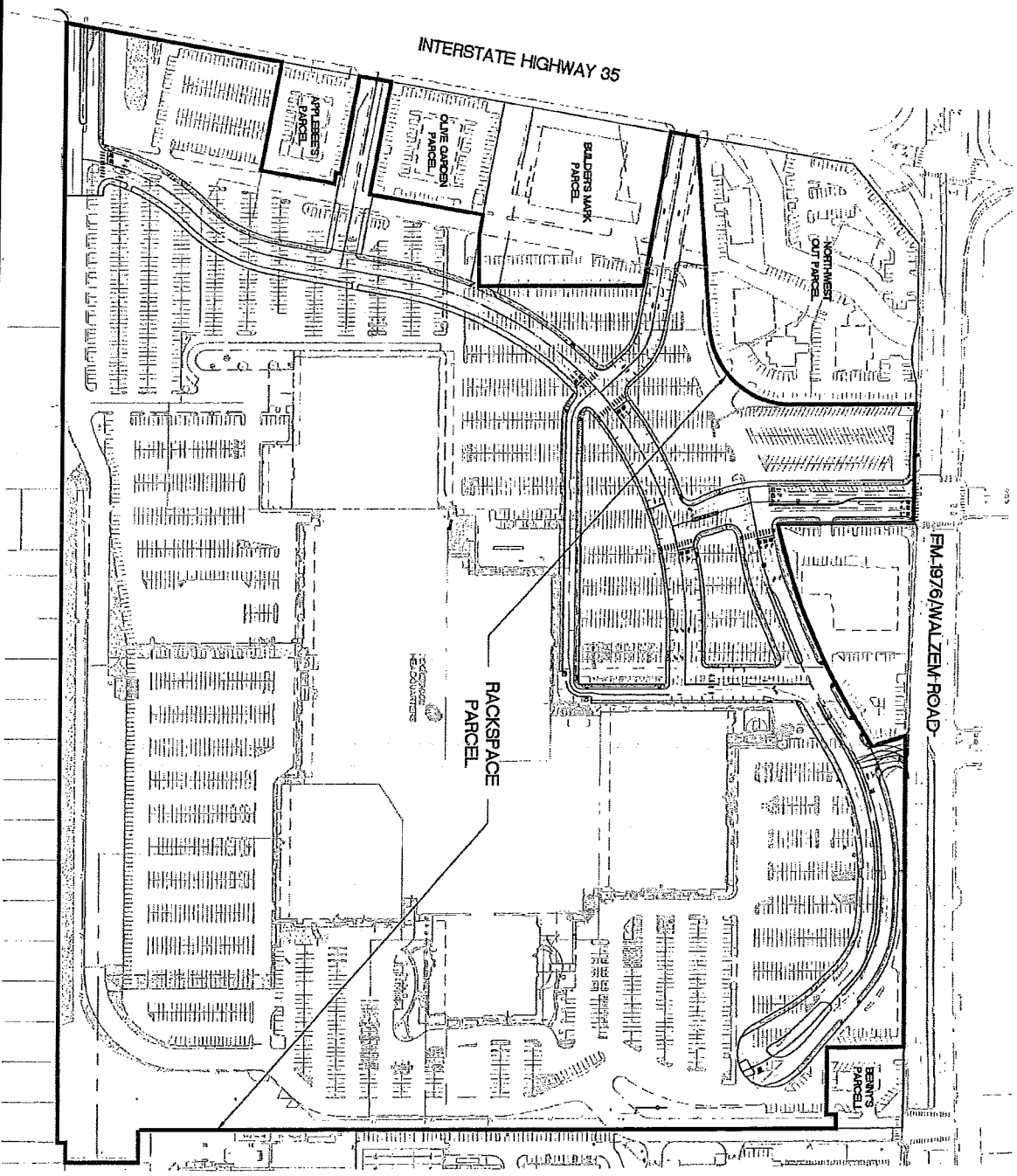


EXHIBIT 'A'

RACKSPACE PARCEL SITE PLAN

PAPE-DAWSON ENGINEERS

555 EAST RANDOLF | SAN ANTONIO, TEXAS 78216 | PHONE: 210 525 9000 FAX: 210 525 9010

TEXAS BOARD OF PROFESSIONAL ENGINEERS, FIRM REGISTRATION # 413

REVISIONS:

JOB NO. 0984-30

DATE FEBRUARY 1992

DESIGNER JJ

DRAWN CHAD BRAUN, CD

CHECKED CHAD BRAUN, CD

SHEET 1

EXHIBIT "A-1"

BEGINNING at a 3/4" iron rod found in the east line of Interstate Highway (IH) 35/ Loop 410 (R.O.W. Varies), also being the southwest corner of said Lot 44, and being the northwest corner of Lot 36, of the Replat of Toys "R" Us Subdivision, recorded in Volume 9520, Page 187, (D.P.R.B.C.T.), for the southwest corner and POINT OF BEGINNING hereof, from which a 4" Texas Department of Transportation (TXDOT) brass disk monument found in the east line of said IH 35/ Loop 410 at station 1882+00 and offset right 213.20', bears S09°56'18"W, a distance of 454.36 feet;

THENCE, with the east line of said IH 35/ Loop 410, same being the west line of said Lot 44, N09°56'18"E, a distance of 437.50 feet to 1/2-inch iron rod found for an angle point hereof, same being the southwest corner of Lot 45 of said Replat Establishing Simon Apple Garden;

THENCE, leaving the east line of said IH 35/ Loop 410, same being the west line of said Lot 44, with the common line between said Lots 44 and 45, the following five (5) courses and distances:

1) S80°21'18"E, a distance of 217.15 feet to a PK nail found for an angle point hereof, same being the southeast corner of said Lot 45, and a southeast corner of said Lot 44;
2) N10°05'00"E, a distance of 147.36 feet to a 1/2-inch iron rod found for an angle point hereof, same being a northeast corner for said Lot 45, also being an angle point for said Lot 44;
3) N80°16'37"W, a distance of 22.47 feet to a 1/2-inch iron rod found for an angle point hereof, same being an angle point for said Lots 44 and 45;
4) N09°43'58"E, a distance of 9.05 feet to a 1/2-inch iron rod found for an angle point hereof, same being a northeast corner for said Lot 45, also being an angle point for said Lot 44;
5) N80°08'26"W, a distance of 195.02 feet to a 1/2-inch iron rod found for an angle point hereof, same being the northwest corner of said Lot 45, also being an angle point of said Lot 44, same being a point in the east line of said IH 35/ Loop 410;

THENCE, with the east line of said IH 35/ Loop 410, same being the west line of said Lot 44, N09°56'18"E, a distance of 64.23 feet to a 1/2-inch iron rod with "Vickery" cap found for an angle point hereof, same being the southwest corner of Lot 46 of said Replat Establishing Simon Apple Garden, also being an angle point for said Lot 44;

THENCE, leaving the east line of said IH35/ Loop 410, same being the west line of said Lot 44, with the common line between said Lots 44 and 46, S80°07'28"E, a distance of 225.13 feet to a 1/2-inch iron found for an angle point hereof, same being the southeast corner of said Lot 46, also being an angle point for said Lot 44;

THENCE, continuing with the common line between said Lots 44 and 46, N09°56'34"E, a distance of 230.05 feet a 1/2-inch iron rod found for an angle point hereof, same being the northeast corner of said Lot 46, same being an angle point for said Lot 44;

THENCE, crossing through said Lot 24, S80°02'51"E, a distance of 37.96 feet to a PK nail found for an angle point hereof, same being an angle point for said 11.5384 acre tract, also being an angle point for said Lot 44;

THENCE, continuing through said Lot 24, with a north line of said 11.5384 acre tract, N89°45'32"E, a distance of 103.11 feet to a PK nail found for an angle point hereof, same being an angle point of said 11.5384 acre tract, said point lies within said Lot 24;

THENCE, continuing through said Lot 24, with a west line of said 11.5384 acre tract, N00°36'38"E, a distance of 327.41 feet to a PK nail found for an angle point hereof, same being an angle point of said 11.5384 acre tract, said point lies within said Lot 24;

THENCE, continuing through said Lot 24, with a south line of said 11.5384 acre tract, N80°48'25"W, a distance of 311.55 feet to a PK nail found for an angle point hereof, same being an angle point of said 11.5384 acre tract, and being a point in the west line of said Lot 24, also being a point in the east line of said IH35/ Loop 410;

THENCE, with the west line of said Lot 24, same being the east line of said IH 35/ Loop 410, N09°56'18"E, a distance of 54.60 feet to a 1/2-inch iron rod with "Doucet & Assoc," cap set for a northwest corner hereof, same being a northwest corner of said Lot 24, and the southwest corner of Lot 22 of the Simon Subdivision recorded in Volume 7300, Page 69, (D.P.R.B.C.T.);

THENCE, with the south line of said Lot 22, and the north line of said Lot 24, N85°26'50"E, a distance of 381.62 feet to a PK nail with "Brown" shiner found for a point of curvature (P.C.) hereof, same being a P.C. for said Lot 22, also being a northwest corner and P.C. of said Lot 25;

THENCE, continuing with the southeast line of said Lot 22, and with the northwest line of said Lot 25, along a curve to the left, whose radius is 159.75 feet, whose delta is 85°23'33", at an arc length of 238.09 feet, and overall chord which bears N42°47'06"E, a distance 216.66 feet to a 1/2-inch iron rod with

"Vickery" aluminum cap found for a point of tangency (P.T.) hereof, same being a P.T. for said Lots 22 and 25;

THENCE, continuing with the west line of said Lot 22, and the east line of said Lot 25, N00°05'45"E, a distance of 249.80 to a 1/2-inch iron rod with "Vickery" cap found for a northwest corner hereof, same being a northwest corner of said Lot 25, and a northeast corner of said Lot 22, same being a point in the south line of Walzem Road/ Farm to Market (FM) 1976 (R.O.W. Varies);

THENCE, with the south line of said Walzem Road/ FM 1976, and the north line of said Lot 25, N89°47'19"E, a distance of 112.39 feet to a Mag nail with "Brown" shiner found for an angle point hereof, same being an angle point for said Lot 25, also being an angle point for said Walzem Road/ FM 1976, from which a 4" Texas Department of Transportation (TXDOT) brass disk monument found bears, S76°06'59"W, a distance of 1.29 feet;

THENCE, continuing with the south line of said Walzem Road/ FM 1976, and the north line of said Lot 25, S88°27'18"E, a distance of 120.88 feet to a Mag nail with "Doucet" washer set for an angle point hereof;

THENCE, leaving the south line of said Walzem Road/ FM 1976, same being the north line of said Lot 25, passing through said Lot 25 the next four (4) courses and distances:

1) S00°17'20"E, distance of 268.51 feet to a Mag nail with "Doucet" washer set for an angle point hereof;
2) Along a curve to the right, whose radius is 921.48 feet, whose delta is 01°33'47"", whose arc length is 25.14 feet, and whose chord bears N77°14'29"E, a distance of 25.14 feet to a Mag nail with "Doucet" washer set for a point of reverse curvature (P.R.C.) hereof;

3) Along a curve to the left, whose radius is 750.00 feet, whose delta is 09°26'18", whose arc length is 123.55 feet, and whose chord bears N73°18'14"E, a distance of 123.41 feet to a Mag nail with "Doucet" washer set for a point of compound curvature (P.C.C.) hereof;
4) Along a curve to the left, whose radius is 2010.40 feet, whose delta is 03°54'26", whose arc length is 137.10' feet, and whose chord bears N66°37'52"E, a distance of 137.07 feet to a Mag nail with "Doucet" washer set for a point of compound curvature (P.C.C.) hereof;

THENCE, continuing through said Lot 25, and in part through said Lot 44, along a curve to the left, whose radius is 500.00 feet, whose delta is 10°19'44", at an arc length of 14.77 feet passing the common line between said Lots 25 and 44, for an overall arc length of 90.14 feet, and whose overall chord bears N59°30'47"E, a distance of 90.02 feet to a Mag nail with "Doucet" washer set for a P.R.C. hereof, said point lies within said Lot 44;

THENCE, continuing in part through said Lot 44, and through said Lot 38, along a curve to the right, whose radius is 500.00 feet, whose delta is 11°52'41", at an arc length of 3.44 feet passing the common line between said Lots 44 and 38, for an overall arc length of 103.66 feet, and whose overall chord bears N60°17'16"E, a distance of 103.47 feet to a Mag nail with "Doucet" washer set for a P.T. hereof, said point lies in said Lot 38;

THENCE, continuing through said Lot 38, N16°51'53"W, a distance of 69.10 feet to a PK nail with "Brown" shiner found for an angle point hereof, same being a point in the south line of said Walzem Road/ FM 1976, also being the northern most northwest corner of said Lot 38, and the northeast corner of said Lot 44;

THENCE, with the south line of said Walzem Road/ FM 1976, same being the north line of said Lot 38, N89°44'36"E, a distance of 592.04 feet to a 1/2-inch iron rod with "Vickery" aluminum cap found for an angle point hereof, same being an angle point in the south line of said Walzem Road/ FM 1976, and an angle point in the north line of said Lot 38;

THENCE, continuing with the south line of said Walzem Road/ FM 1976, same being the north line of said Lot 38, N88°28'52"E, a distance of 17.99 feet to a "X" cut in concrete for the northern most northeast corner hereof, same being the northern most northeast corner of said Lot 38, also being the northwest corner of Lot 39 of said Replat of Subdivision Plat of Simon Subdivision,

THENCE, leaving the south line of said Walzem Road/ FM 1976, with the common line between said Lots 38 and 39 the following four (4) courses and distances:

1) S00°16'05"E, a distance of 151.24 feet to a 1/2-inch iron rod with "Vickery" aluminum cap found for an angle point hereof, same being the southwest corner of said Lot 39, and an angle point for said Lot 38;
2) N89°45'07"E, a distance of 131.79 feet to a 1/2-inch iron rod found for an angle point hereof, same being a southeast corner of said Lot 39, also being an angle point for said Lot 38;
3) N00°14'38"W, a distance of 18.06 feet to a 1/2-inch iron rod with "Vickery" cap found for an angle point hereof, same being an angle point for said Lots 38 and 39;

4) N89°37'31"E, a distance of 27.57 feet to a PK nail found for the eastern most northeast corner hereof, same being the eastern most southeast corner for said Lot 39, and the eastern most northeast corner of said Lot 38, also being a point in the west line of Lot 2, Block 1 of the Replat and Subdivision Plat Establishing Roosevelt High School Subdivision recorded in Volume 9566, Page 132, (D.P.R.B.C.T.);

THENCE, in part with the east line of Lot 38 and in part with the east line of Lot 37, both of said Replat of Simon Subdivision, and with the west line of Lot 2 of said Roosevelt High School, S00°13'42"E, at a distance of 685.73 feet passing the northeast corner of Lot 37, and being the southeast corner of Lot 38, for a total distance of 1379.71 feet to a PK Nail with "Brown" washer found for an interior ell corner hereof, said point is also an interior ell corner of said Lot 37, and being the southwest corner of said Lot 2;

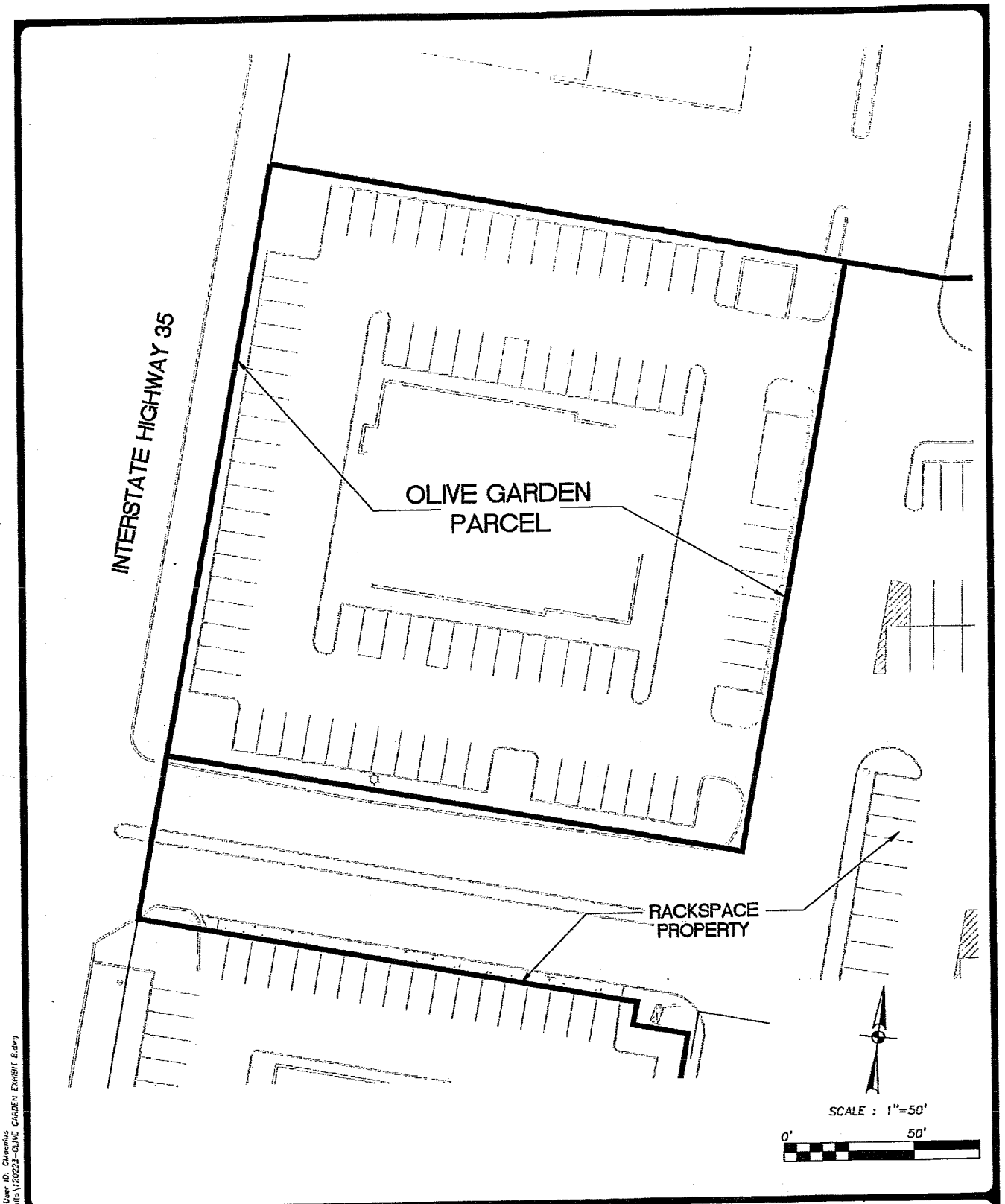
THENCE, with a north line of said Lot 37, and in part with the south line of said Lot 2, N89°35'15"E, a distance of 63.93 feet to a PK with Shiner found for an exterior ell corner hereof, said point is also an exterior ell corner of said Lot 37;

THENCE, in part with an east line of said Lot 37, and in part with an east line of Lot 44 of said Replat Establishing Simon Apple Garden, S00°31'25"E, a distance of 145.30 feet to a 1/2" iron rod found for a southeast corner hereof, said point is also a southeast corner of said Lot 44 and being the northwest corner of Lot 12, Block 10 of Camelot Subdivision Unit 7, recorded in Volume 6500, Page 144 (D.P.R.B.C.T.), and being a point in the east line of a 40' City Public Service Board Easement as shown on said plat,

THENCE, with the south line of said Lot 44, and the north line of said 40' City Service Board Easement, S89°43'01"W, a distance of 39.73 feet to a 1/2" iron rod found for an interior ell corner hereof, said point is also a point on the west line of said 40' City Public Service Board Easement, and being an interior ell corner of said Lot 44;

THENCE, with the west line of said 40' City Public Service Board Easement, and a west line of said Lot 44, S00°56'32"W, a distance of 15.88 feet to a 1/2" iron rod found for an exterior ell corner hereof, said point is also an exterior ell corner of said Lot 44, and being the northeast corner of Lot 13 of said Camelot Subdivision;

THENCE, in part with the north line of Lots 13-26, Block "D" of said Camelot Subdivision, and in part with the north line of Lot 9, Block "B", of Camelot Subdivision Unit 5A, recorded in Volume 6500, Page 16 (D.P.R.B.C.T.), and in part with the north line of Lot 49 of Windsor Square Wal-Mart III recorded in Volume 9560, Page 80 (D.P.R.B.C.T.), and in part with the north line of Lot 36 of said Toys "R" Us, S89°31'43"W, a distance of 2200.44 feet to the POINT OF BEGINNING and containing 66.9915 Acre (2,918,150 sq. ft.) of land, more or less.



JOB NO. 6984-30

DATE FEBRUARY, 2012

DESIGNER JM

CHECKED DM DRAWN JM

SHEET 1 OF 1

EXHIBIT 'B'

OLIVE GARDEN SITE PLAN

PAPE-DAWSON ENGINEERS

555 EAST RAMSEY | SAN ANTONIO, TEXAS 78216 | PHONE: 210 375.9000 FAX: 210 375.9010

TEXAS BOARD OF PROFESSIONAL ENGINEERS, FIRM REGISTRATION # 470

Date: Feb 28, 2012, 10:45am User ID: Gdomino
File P:\69\64\30\Design\Exhibits\120223-OLIVE GARDEN EXHIBIT B.dwg

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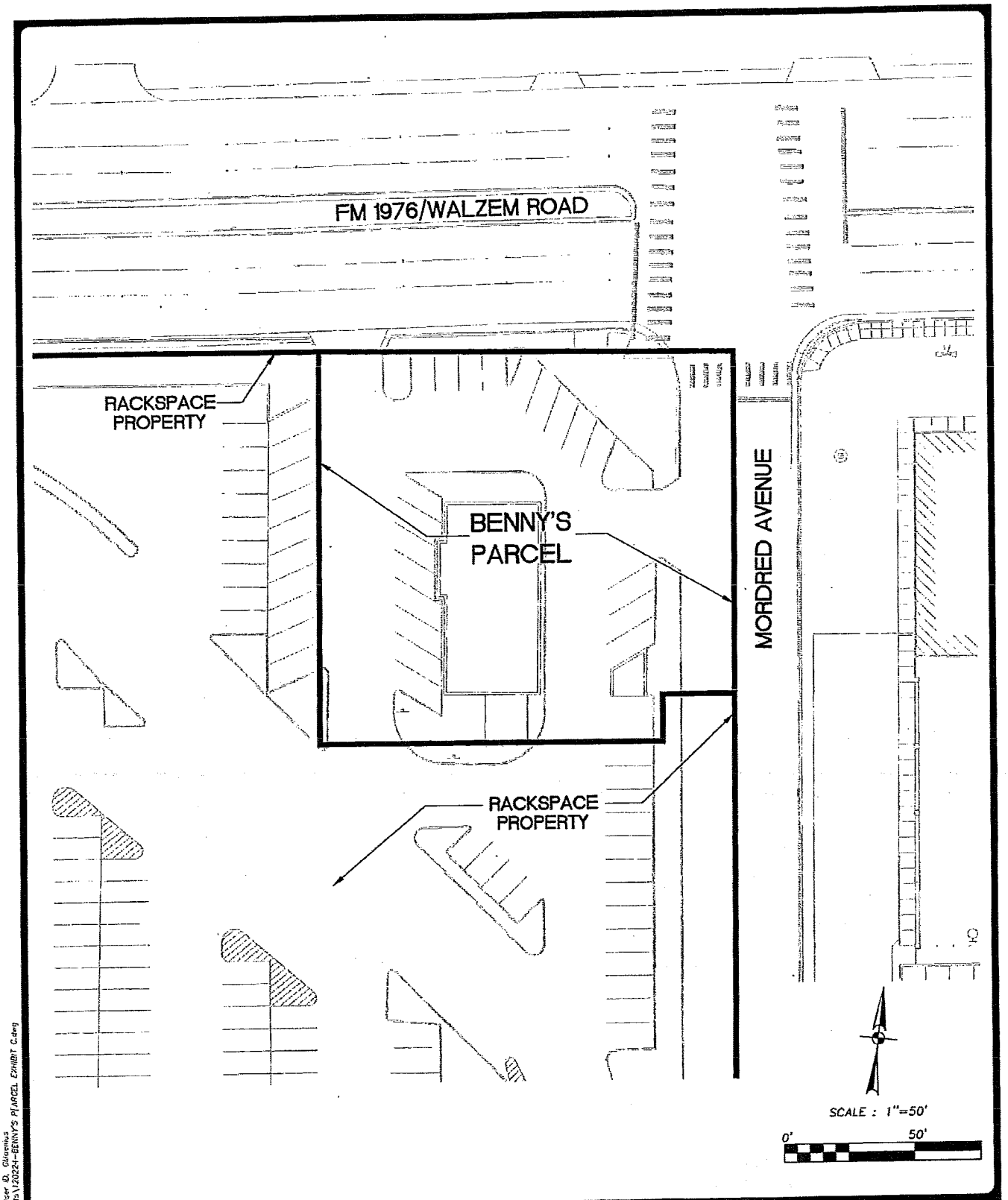
Exhibit B-1
Legal Description of Olive Garden Parcel

Lot 46, NCB12190 Simon Apple Garden Subdivision, an Addition to the City of San Antonio, Bexar County, Texas, according to the map or plat thereof recorded in Volume 9551, Page 187-88, in the Deed and Plat Records of Bexar County, Texas.



JOB NO. 6984-30

DATE FEBRUARY, 2012

DESIGNER JM

CHECKED DM DRAWN JM

SHEET 1 OF 1

EXHIBIT 'C'

BENNY'S SITE PLAN

PAPE-DAWSON ENGINEERS

555 EAST RAMSEY | SAN ANTONIO, TEXAS 78216 | PHONE: 210.375.9000 FAX: 210.375.9010

TEXAS BOARD OF PROFESSIONAL ENGINEERS, FIRM REGISTRATION # 470

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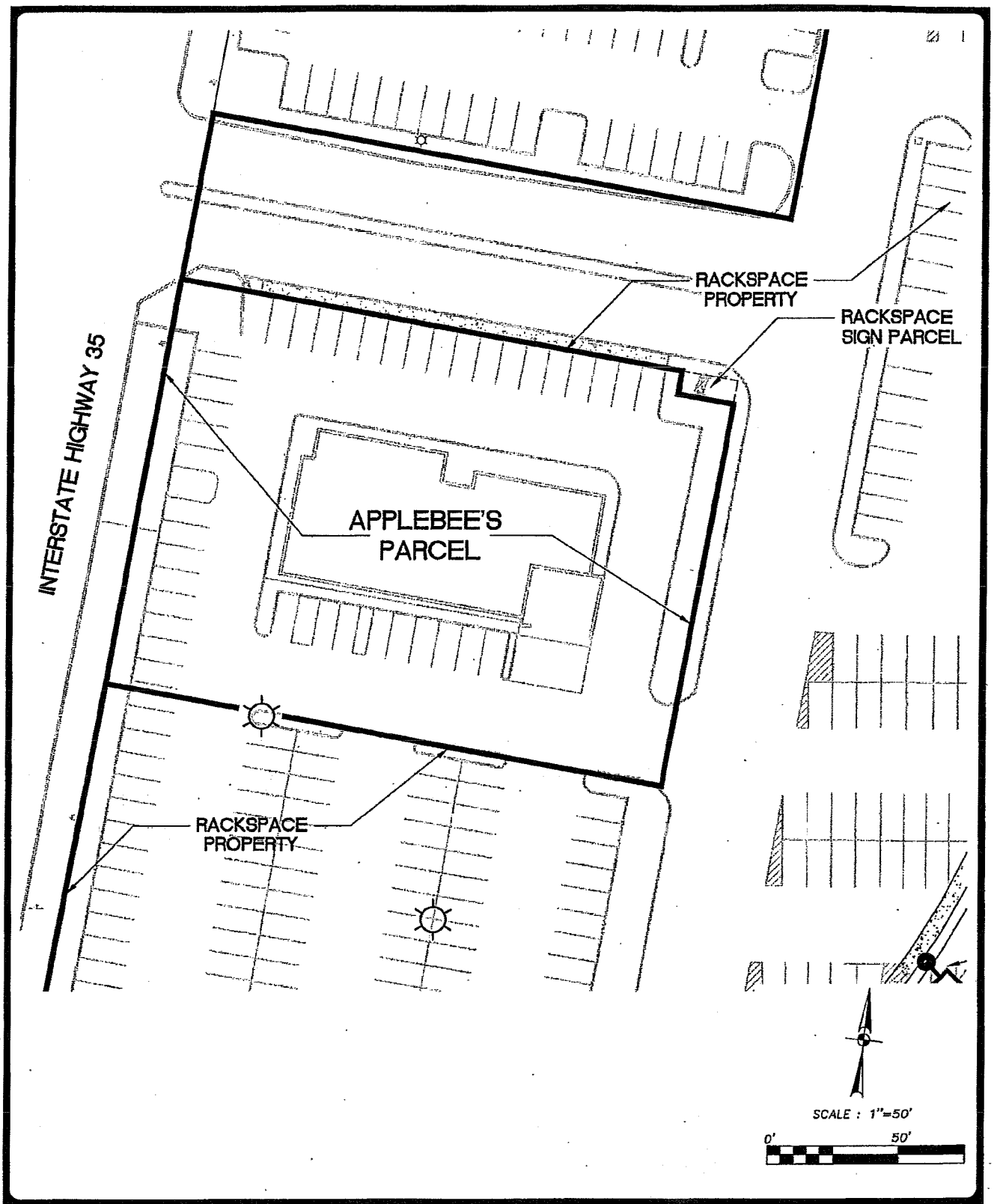
Date: Feb 28, 2012, 10:50am User ID: Gilbertus
File: P:\69\34\30\Design\Exhibits\20224-BENNY'S PLARCEL EXHIBIT C.dwg

Exhibit C-1
Legal Description of Benny's Parcel

Lot 39, NCB12190, Simon Subdivision, an Addition to the City of San Antonio, Bexar County, Texas, according to the map or plat thereof recorded in Volume 9522, Page 107-108, in the Deed and Plat Records of Bexar County, Texas.



JOB NO. 6984-30

DATE FEBRUARY, 2012

DESIGNER JM

CHECKED DM DRAWN JM

SHEET 1 OF 1

EXHIBIT 'D'

APPLEBEE'S SITE PLAN

PAPE-DAWSON ENGINEERS

555 EAST RAMSEY | SAN ANTONIO, TEXAS 78216 | PHONE: 210.375.9000 FAX: 210.375.9010

TEXAS BOARD OF PROFESSIONAL ENGINEERS, FIRM REGISTRATION # 470

Date: May 11, 2012, 10:20am User ID: GMorris
File: P:\09\04\30\Design\Exhibits\120224-APPLEBEE'S EXHIBIT D.dwg

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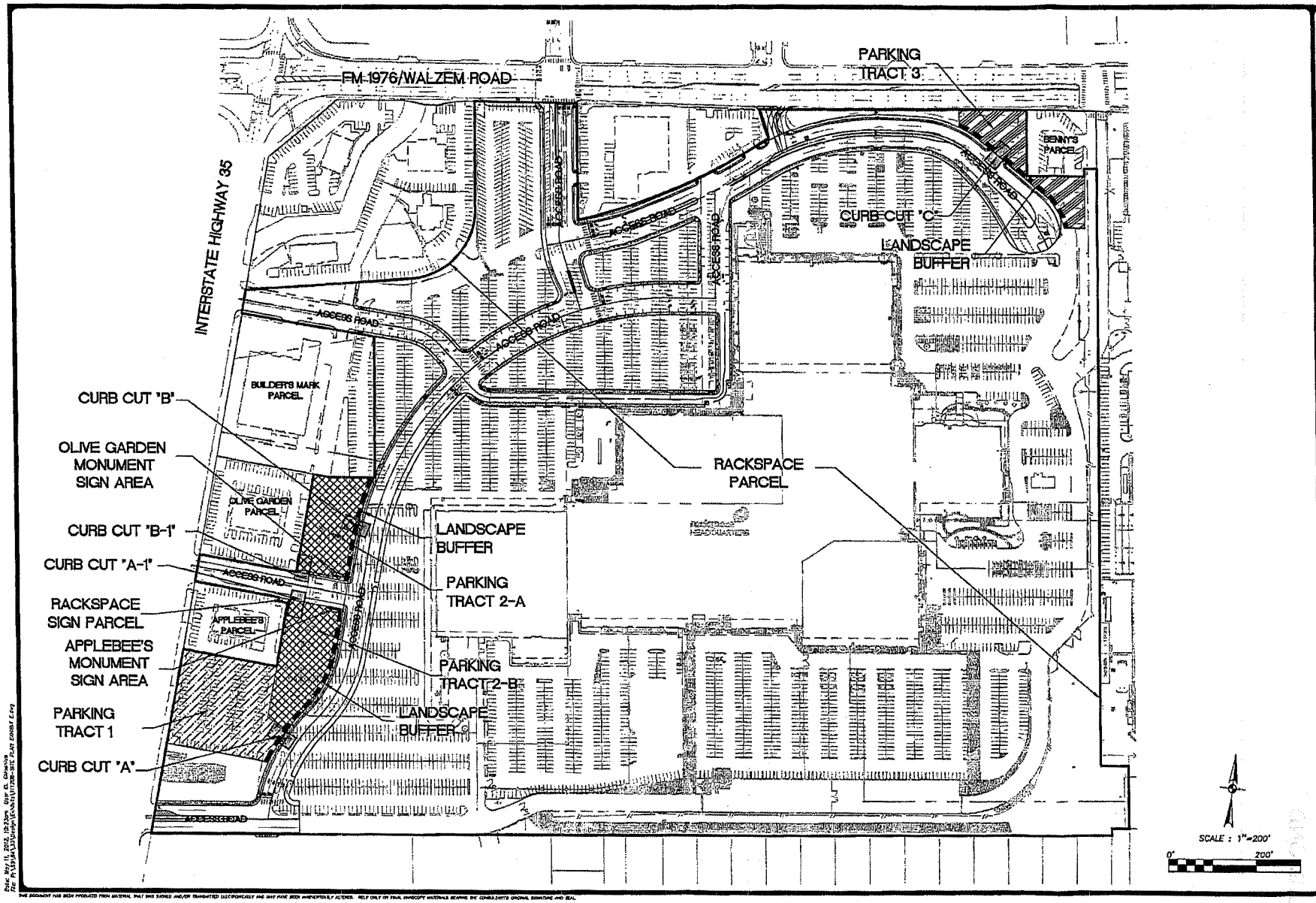
Exhibit D-1
Legal Description of Applebee's Parcel

Lot 45, NCB12190 Simon Apple Garden Subdivision, an Addition to the City of San Antonio, Bexar County, Texas, according to the map or plat thereof recorded in Volume 9551, Page 187-88, in the Deed and Plat Records of Bexar County, Texas.



REVISIONS:

PAPE-DAWSON ENGINEERS

555 EAST RANDY | SAN ANTONIO, TEXAS 78216 | PHONE 210.375.9000 FAX 210.375.9010

TEXAS BOARD OF PROFESSIONAL ENGINEERS FIRM REGISTRATION # 470

EXHIBIT 'E'
OVERALL SITE PLAN FOR NEW PARKING TRACTS

JOB NO. 0964-30

DATE FEBRUARY, 2012

DESIGNER JM

CHECKED DM DRAWN RD

SHEET 1 of 3

Date: May 11, 2012, 10:33am Eric D. Gravius
File: P:\59\84\13\Design\Exhibits\11-006-SITE PLAN EXHIBIT.dwg

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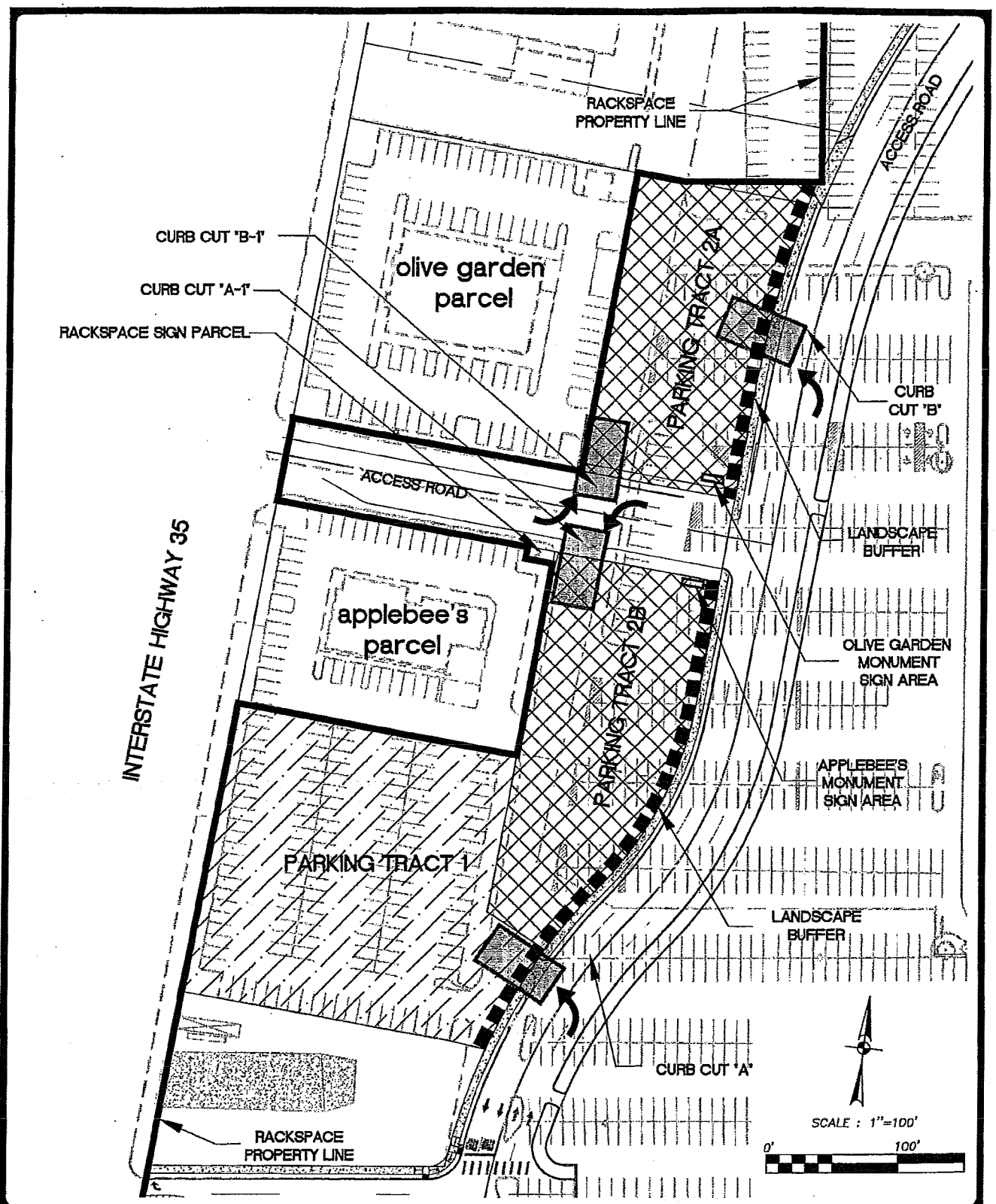

JOB NO. 6984-30

DATE FEBRUARY, 2012

DESIGNER JM

CHECKED DM DRAWN JM

SHEET 2 OF 3

EXHIBIT 'E-1'

SITE PLAN FOR PARKING TRACTS 1 AND 2

PAPE-DAWSON ENGINEERS

555 EAST RAMSEY | SAN ANTONIO, TEXAS 78216 | PHONE: 210.375.9000 FAX: 210.375.9010

TEXAS BOARD OF PROFESSIONAL ENGINEERS, FIRM REGISTRATION # 470

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Date: May 11, 2012, 10:26am User ID: Ckiomlus
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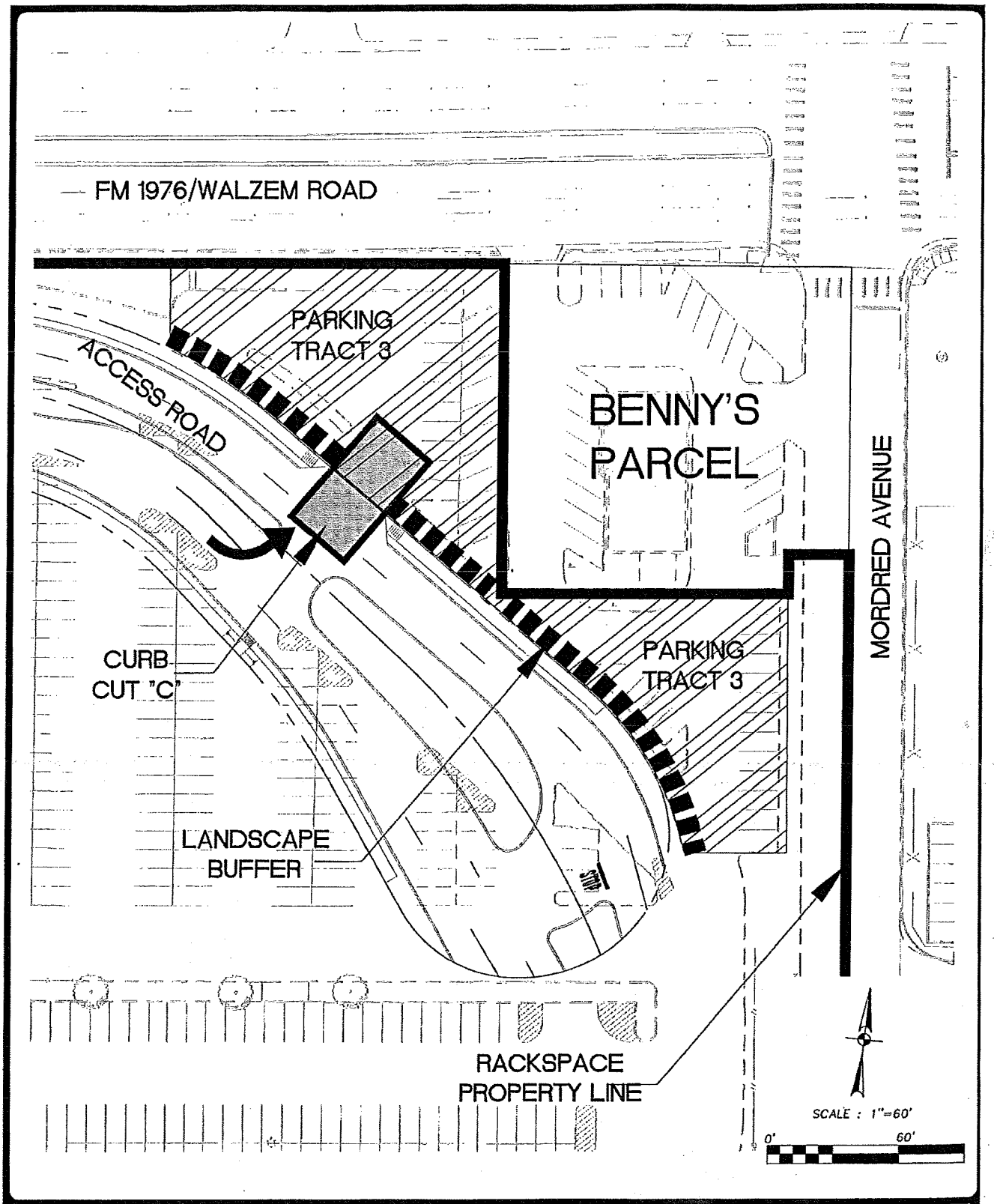

JOB NO. 6984-30
DATE FEBRUARY, 2012
DESIGNER JM
CHECKED DM DRAWN JM
SHEET 3 OF 3

EXHIBIT 'E-2'
SITE PLAN FOR PARKING TRACT 3

PAPE-DAWSON ENGINEERS
555 EAST RAMSEY | SAN ANTONIO, TEXAS 78216 | PHONE: 210.375.9000 FAX: 210.375.9010
TEXAS BOARD OF PROFESSIONAL ENGINEERS, FIRM REGISTRATION # 470

Date: Mar 07, 2012, 9:50am User ID: GMoomaw
File: P:\6984\30\Design\Exhibits\120224-SITE PLAN Exhibit E-2.dwg

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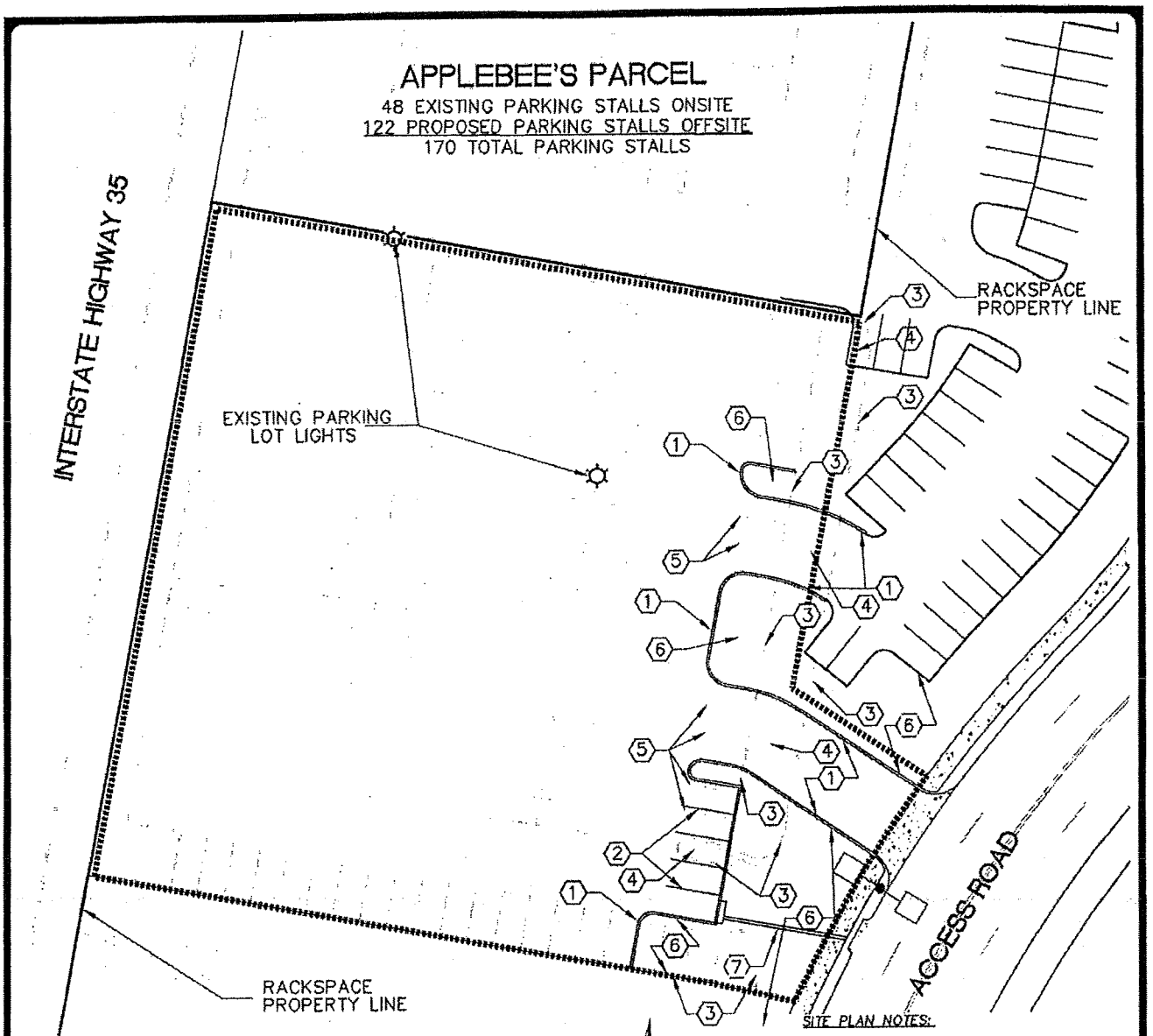

SITE PLAN NOTES:

1. NEW PARKING STALL DIMENSIONS SHALL BE 9'X18' AND DRIVING ISLES SHALL BE 25' WIDE IN ACCORDANCE WITH CITY OF WINDCREST DEVELOPMENT RULES.

2. WHERE ASPHALT IS REMOVED TO CREATE CURBED ISLANDS, DECOMPOSED GRANITE SHALL BE USED TO FILL IN THE CURBED ISLAND.

3. ACTUAL PARKING NUMBERS MIGHT DIFFER SLIGHTLY FROM THE NUMBERS DEPICTED HEREIN DUE TO FIELD CONDITIONS, BUT NOT MORE THAN 3 SPACES.

LEGEND

1. DENOTES PROPOSED CURB
2. DENOTES PROPOSED STRIPING
3. EXISTING CURB TO BE REMOVED.
4. DENOTES AREA OF PROPOSED ASPHALT PAVEMENT
5. DENOTES EXISTING STRIPING TO BE REMOVED
6. DENOTES EXISTING ASPHALT TO BE REMOVED
7. NEW STORM DRAIN IF REQUIRED.

DENOTES PROPOSED STREET LIGHTS

DENOTES PARKING TRACT BOUNDARY

SCALE : 1"=50'

0' 50'

LUMINAIRE SCHEDULE

Symbol	Label	Qty	Catalog Number	Description	Lamp	File	Lumens	LLF	Watts
	E	19	CHLD 250S R2 FL (B-SHORT-CUTOFF)	FLAT GLASS LENS, ALUMINUM DJ REFLECTOR SOCKET POSITION A-2	ONE 250-WATT CLEAR ET-18 HIGH PRESSURE SODIUM, HORIZONTAL POSITION.	CHLD_250S_R 2_FL_(B-SHORT-CUTOFF).ies	25000	0.81	310
	F	4	CHLD 250S R2 FL (B-SHORT-CUTOFF)	FLAT GLASS LENS, ALUMINUM DJ REFLECTOR SOCKET POSITION A-2	ONE 250-WATT CLEAR ET-18 HIGH PRESSURE SODIUM, HORIZONTAL POSITION.	CHLD_250S_R 2_FL_(B-SHORT-CUTOFF).ies	25000	0.81	320

JOB NO. 5984-30

DATE FEBRUARY, 2012

DESIGNER JM

CHECKED DM DRAWN JM

SHEET 1 OF 4

EXHIBIT 'F1'

DETAILED PARKING LOT LAYOUT FOR APPLEBEE'S - AS OF COMPLETION DATE

(PARKING TRACT 1)

PAPE-DAWSON ENGINEERS

555 EAST RANDOLF | SAN ANTONIO, TEXAS 78216 | PHONE: 210 375.9000 FAX: 210 375.9010

TEXAS BOARD OF PROFESSIONAL ENGINEERS, FIRM REGISTRATION # 470

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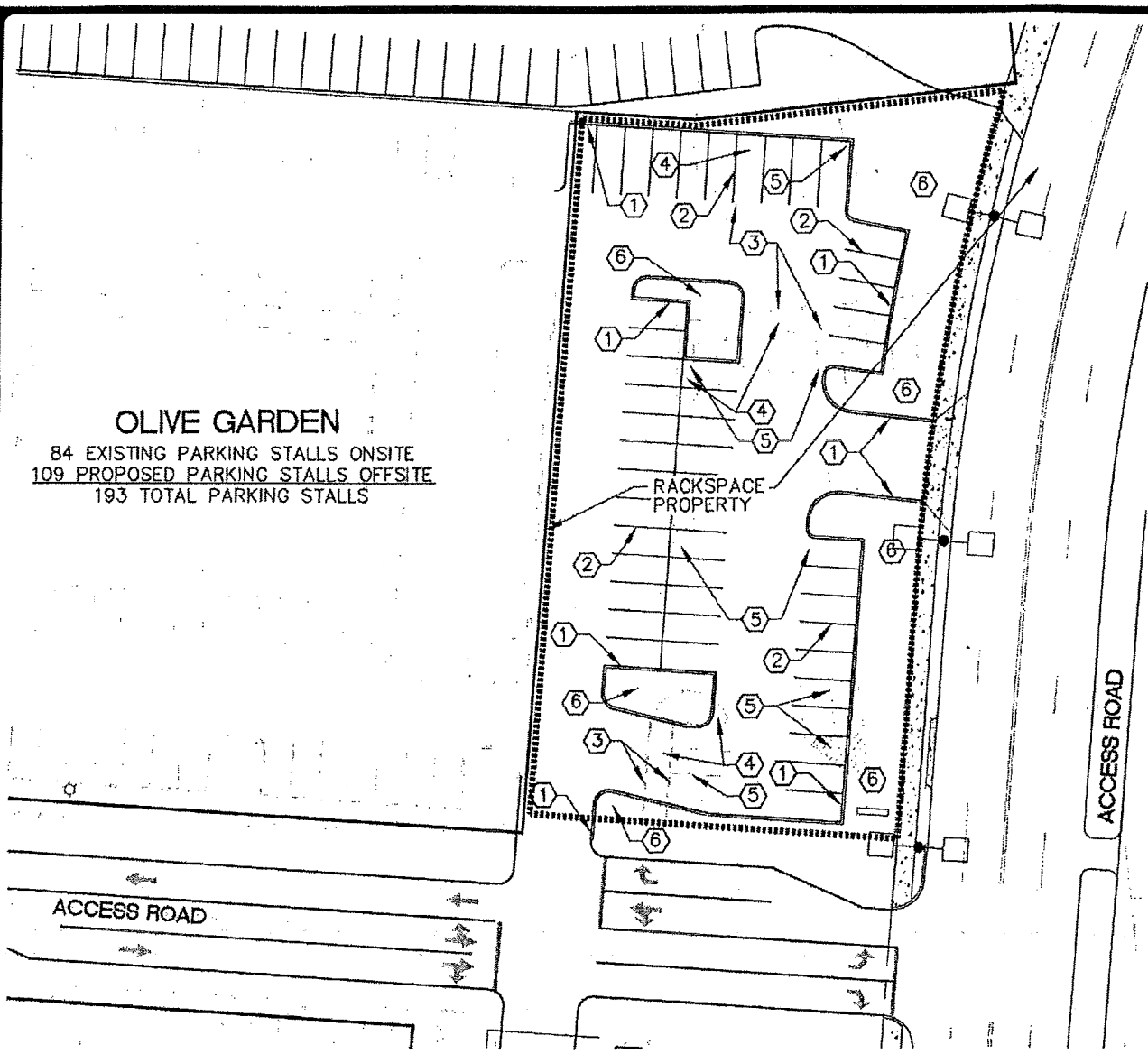
Date: May 18, 2012, 4:56pm User ID: DMcKinney
File: P:\5984\84-30\Design\Sheets\2012-12-DETAILED PARKING LOT LAYOUT-EXHIBIT F1.dwg



LEGEND

- (1) DENOTES PROPOSED CURB
- (2) DENOTES PROPOSED STRIPING
- (3) EXISTING CURB TO BE REMOVED.
- (4) DENOTES AREA OF PROPOSED ASPHALT PAVEMENT
- (5) DENOTES EXISTING STRIPING TO BE REMOVED
- (6) DENOTES EXISTING ASPHALT TO BE REMOVED
- DENOTES PROPOSED STREET LIGHTS
- DENOTES PARKING TRACT BOUNDARY

SCALE : 1"=50'

0' 50'

SITE PLAN NOTES:

1. NEW PARKING STALL DIMENSIONS SHALL BE 9'X18' AND DRIVING ISLES SHALL BE 25' WIDE IN ACCORDANCE WITH CITY OF WINDCREST DEVELOPMENT RULES.

2. WHERE ASPHALT IS REMOVED TO CREATE CURBED ISLANDS, DECOMPOSED GRANITE SHALL BE USED TO FILL IN THE CURBED ISLAND.

3. ACTUAL PARKING NUMBERS MIGHT DIFFER SLIGHTLY FROM THE NUMBERS DEPICTED HEREIN DUE TO FIELD CONDITIONS, BUT NOT MORE THAN 3 SPACES.

LUMINAIRE SCHEDULE

Symbol	Label	Qty	Catalog Number	Description	Lamp	File	Lumens	LLF	Watts
	E	19	CHLD 250S R2 FL (B-SHORT-CUTOFF)	FLAT GLASS LENS, ALUMINUM DJ REFLECTOR SOCKET POSITION A-2	ONE 250-WATT CLEAR ET-18 HIGH PRESSURE SODIUM, HORIZONTAL POSITION.	CHLD_250S_R2_FL_(B-SHORT-CUTOFF).ies	29000	0.91	318
	F	4	CHLD 250S R2 FL (B-SHORT-CUTOFF)	FLAT GLASS LENS, ALUMINUM DJ REFLECTOR SOCKET POSITION A-2	ONE 250-WATT CLEAR ET-18 HIGH PRESSURE SODIUM, HORIZONTAL POSITION.	CHLD_250S_R2_FL_(B-SHORT-CUTOFF).ies	29000	0.91	620

JOB NO. 6984-30

DATE FEBRUARY, 2012

DESIGNER JM

CHECKED DM DRAWN JM

SHEET 2 OF 4

EXHIBIT 'F2'

DETAILED PARKING LOT LAYOUT FOR OLIVE GARDEN - AS OF COMPLETION DATE

(PARKING TRACT 2A)

PAPE-DAWSON ENGINEERS

555 EAST RAMSEY | SAN ANTONIO, TEXAS 78216 | PHONE: 210.375.9000 FAX: 210.375.9010

TEXAS BOARD OF PROFESSIONAL ENGINEERS, FIRM REGISTRATION # 470

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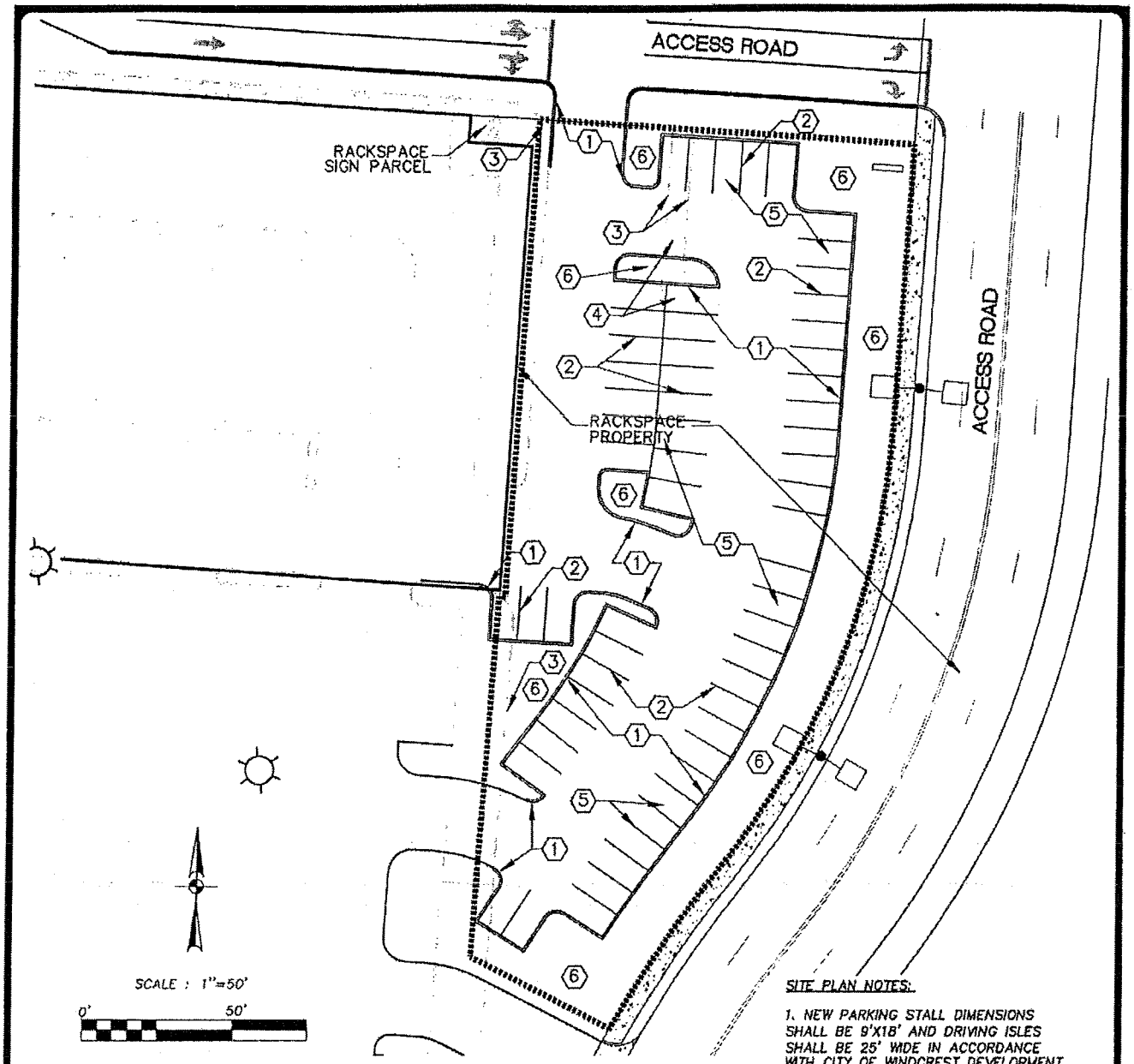

SITE PLAN NOTES:

1. NEW PARKING STALL DIMENSIONS SHALL BE 9'X18' AND DRIVING ISLES SHALL BE 25' WIDE IN ACCORDANCE WITH CITY OF WINDCREST DEVELOPMENT RULES.

2. WHERE ASPHALT IS REMOVED TO CREATE CURBED ISLANDS, DECOMPOSED GRANITE SHALL BE USED TO FILL IN THE CURBED ISLAND.

3. ACTUAL PARKING NUMBERS MIGHT DIFFER SLIGHTLY FROM THE NUMBERS DEPICTED HEREIN DUE TO FIELD CONDITIONS, BUT NOT MORE THAN 3 SPACES.

LEGEND

- (1) DENOTES PROPOSED CURB
- (2) DENOTES PROPOSED STRIPING
- (3) EXISTING CURB TO BE REMOVED.
- (4) DENOTES AREA OF PROPOSED ASPHALT PAVEMENT
- (5) DENOTES EXISTING STRIPING TO BE REMOVED
- (6) DENOTES EXISTING ASPHALT TO BE REMOVED
- DENOTES PROPOSED STREET LIGHTS
- DENOTES PARKING TRACT BOUNDARY

LUMINAIRE SCHEDULE

Symbol	Label	Qty	Catalog Number	Description	Lamp	File	Lumens	LLF	Watts
	E	19	CHLD 2505 R2 FL (B-SHORT-CUTOFF)	FLAT GLASS LENS, ALUMINUM DJ REFLECTOR SOCKET POSITION A-2	ONE 250-WATT CLEAR ET-18 HIGH PRESSURE SODIUM, HORIZONTAL POSITION.	CHLD_2505_R 2_FL_(B-SHORT-CUTOFF).ies	29000	0.81	310
	F	4	CHLD 2505 R2 FL (B-SHORT-CUTOFF)	FLAT GLASS LENS, ALUMINUM DJ REFLECTOR SOCKET POSITION A-2	ONE 250-WATT CLEAR ET-18 HIGH PRESSURE SODIUM, HORIZONTAL POSITION	CHLD_2505_R 2_FL_(B-SHORT-CUTOFF).ies	29000	0.81	620

JOB NO. 8984-30

DATE FEBRUARY, 2012

DESIGNER JM

CHECKED DM DRAWN JM

SHEET 3 OF 4

EXHIBIT 'F3'

DETAILED PARKING LOT LAYOUT FOR OLIVE GARDEN - AS OF COMPLETION DATE

(PARKING TRACT 2B)

PAPE-DAWSON ENGINEERS

555 EAST RAMSEY | SAN ANTONIO, TEXAS 78216 | PHONE 210.375.9000 FAX: 210.375.9010

TEXAS BOARD OF PROFESSIONAL ENGINEERS, FIRM REGISTRATION # 470

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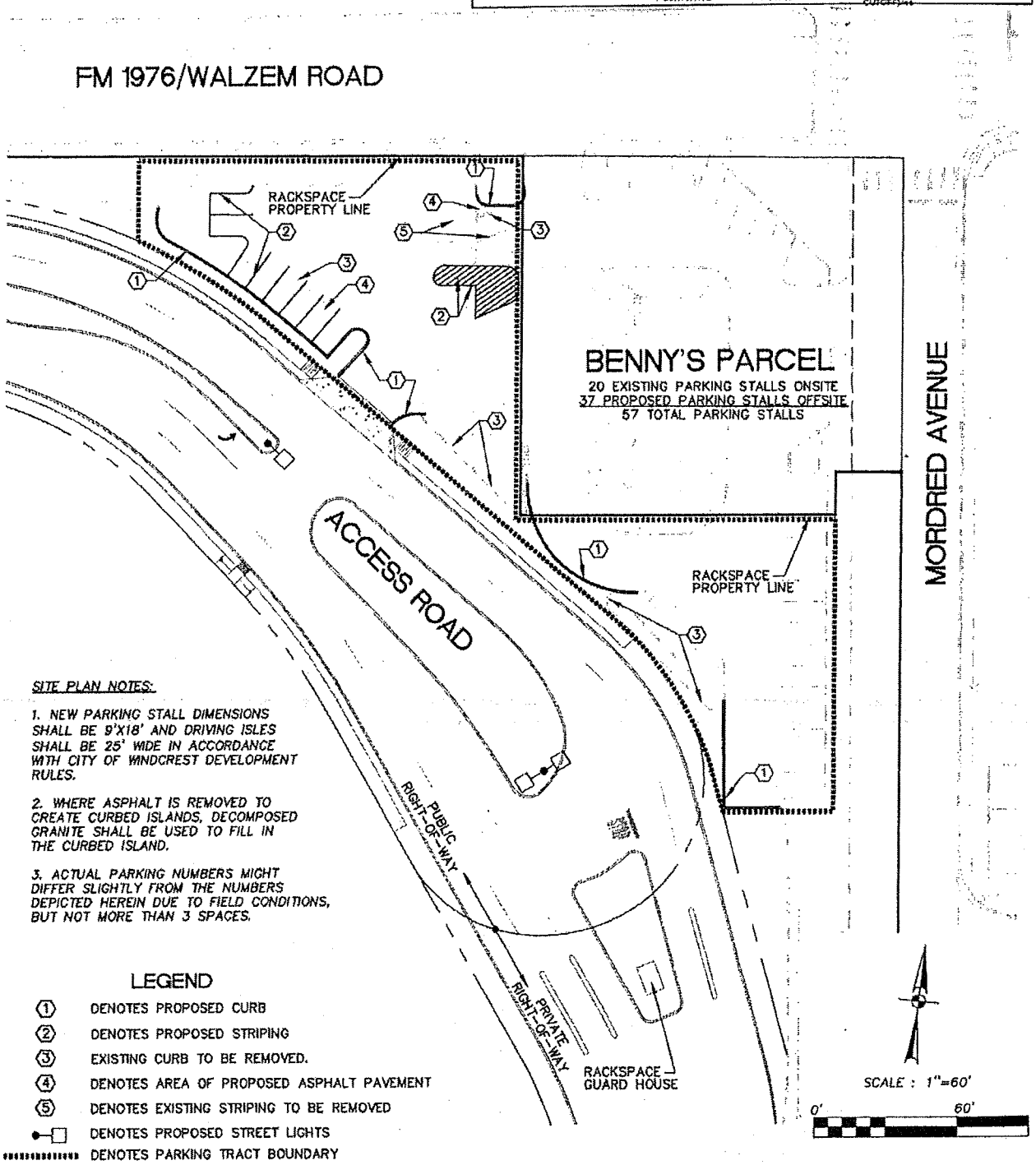
Date: May 18, 2012, 4:32pm User ID: Brightman
File: P:\8984\84-30\Group\LDesign\12021-DETAILED PARKING LOT LAYOUT - EXHIBIT F3.dwg

LUMINAIRE SCHEDULE

Symbol	Label	Qty	Catalog Number	Description	Lamp	File	Lumens	LLF	Watts
	E	19	CHLD 250S R2 FL (B-SHORT-CUTOFF)	FLAT GLASS LENS, ALUMINUM DJ REFLECTOR SOCKET POSITION A-2	ONE 250-WATT CLEAR ET-18 HIGH PRESSURE SODIUM, HORIZONTAL POSITION.	CHLD_250S_R2_FL_(B-SHORT-CUTOFF).ies	29000	0.81	310
	F	4	CHLD 250S R2 FL (B-SHORT-CUTOFF)	FLAT GLASS LENS, ALUMINUM DJ REFLECTOR SOCKET POSITION A-2	ONE 250-WATT CLEAR ET-18 HIGH PRESSURE SODIUM, HORIZONTAL POSITION.	CHLD_250S_R2_FL_(B-SHORT-CUTOFF).ies	29000	0.81	620



SITE PLAN NOTES:

1. *NEW PARKING STALL DIMENSIONS SHALL BE 9'X18' AND DRIVING ISLES SHALL BE 25' WIDE IN ACCORDANCE WITH CITY OF WINDCREST DEVELOPMENT RULES.*
2. *WHERE ASPHALT IS REMOVED TO CREATE CURBED ISLANDS, DECOMPOSED GRANITE SHALL BE USED TO FILL IN THE CURBED ISLAND.*
3. *ACTUAL PARKING NUMBERS MIGHT DIFFER SLIGHTLY FROM THE NUMBERS DEPICTED HEREIN DUE TO FIELD CONDITIONS, BUT NOT MORE THAN 3 SPACES.*

LEGEND

- (1) DENOTES PROPOSED CURB
- (2) DENOTES PROPOSED STRIPING
- (3) EXISTING CURB TO BE REMOVED.
- (4) DENOTES AREA OF PROPOSED ASPHALT PAVEMENT
- (5) DENOTES EXISTING STRIPING TO BE REMOVED
- DENOTES PROPOSED STREET LIGHTS
- DENOTES PARKING TRACT BOUNDARY

JOB NO. 6984-30
DATE FEBRUARY 2012
DESIGNER JM
CHECKED CM DRAWN CM
SHEET 4 OF 4

EXHBIT 'F4'

DETAILED PARKING LOT LAYOUT FOR BENNY'S - AS OF COMPLETION DATE

(PARKING TRACT 3)

PAPE-DAWSON ENGINEERS
555 EAST RAMSEY | SAN ANTONIO, TEXAS 78216 | PHONE 210.375.9000 FAX: 210.375.9010
TEXAS BOARD OF PROFESSIONAL ENGINEERS, FIRM REGISTRATION # 470

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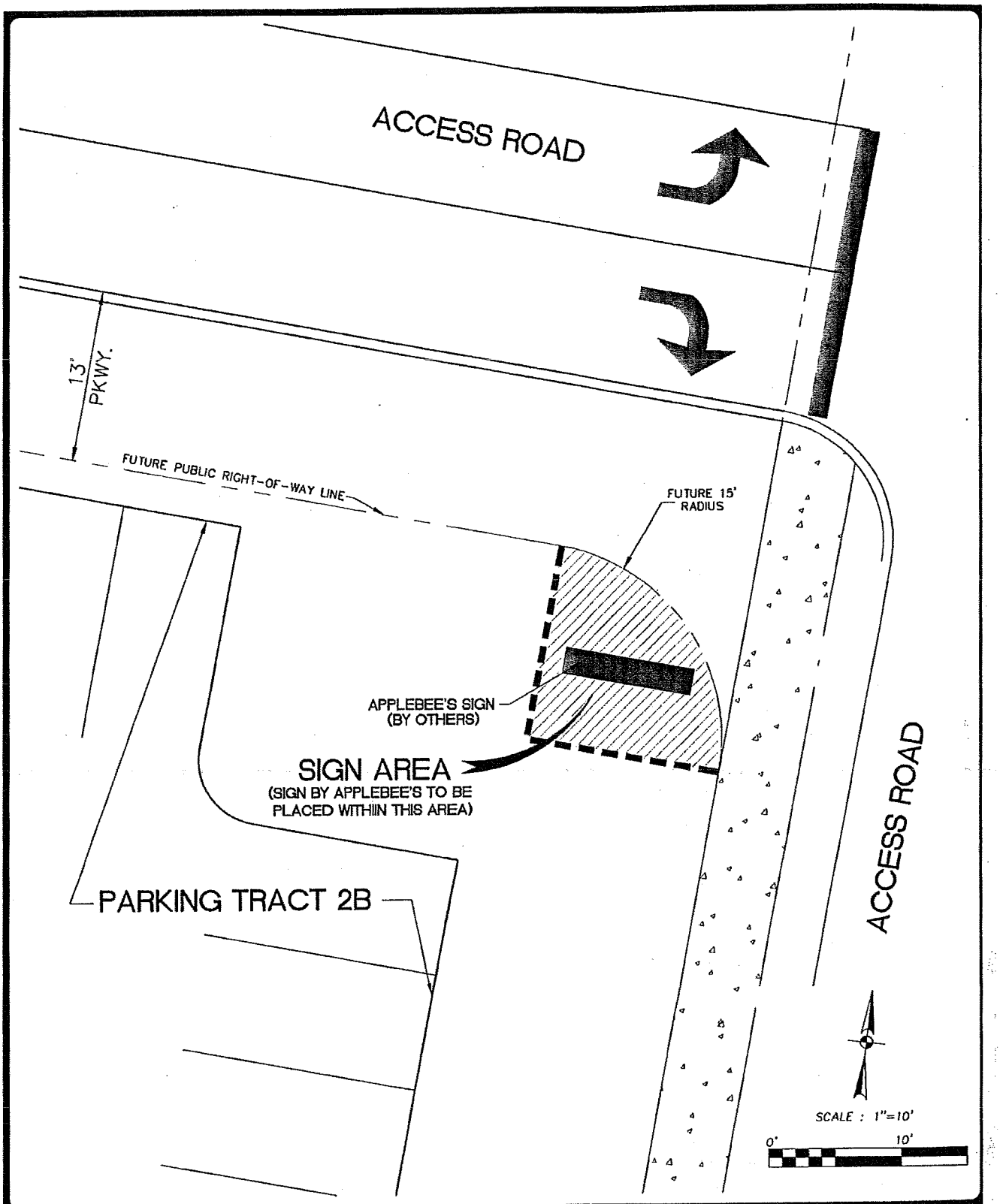

JOB NO. 6984-30
DATE FEBRUARY, 2012
DESIGNER JM
CHECKED DM DRAWN JM
SHEET 1 OF 1

EXHIBIT 'G'
APPLEBEE'S SIGN AREA

PAPE-DAWSON ENGINEERS
555 EAST RAVSEY | SAN ANTONIO, TEXAS 78216 | PHONE: 210.375.9000 FAX: 210.375.9010
TEXAS BOARD OF PROFESSIONAL ENGINEERS, FIRM REGISTRATION # 470

Date: Mar 07, 2012, 8:34am User ID: GAlanius
File: P:\69\6984\3D\Design\Exhibits\120223-APPLEBEE'S SIGN AREA-EXHIBIT G.dwg

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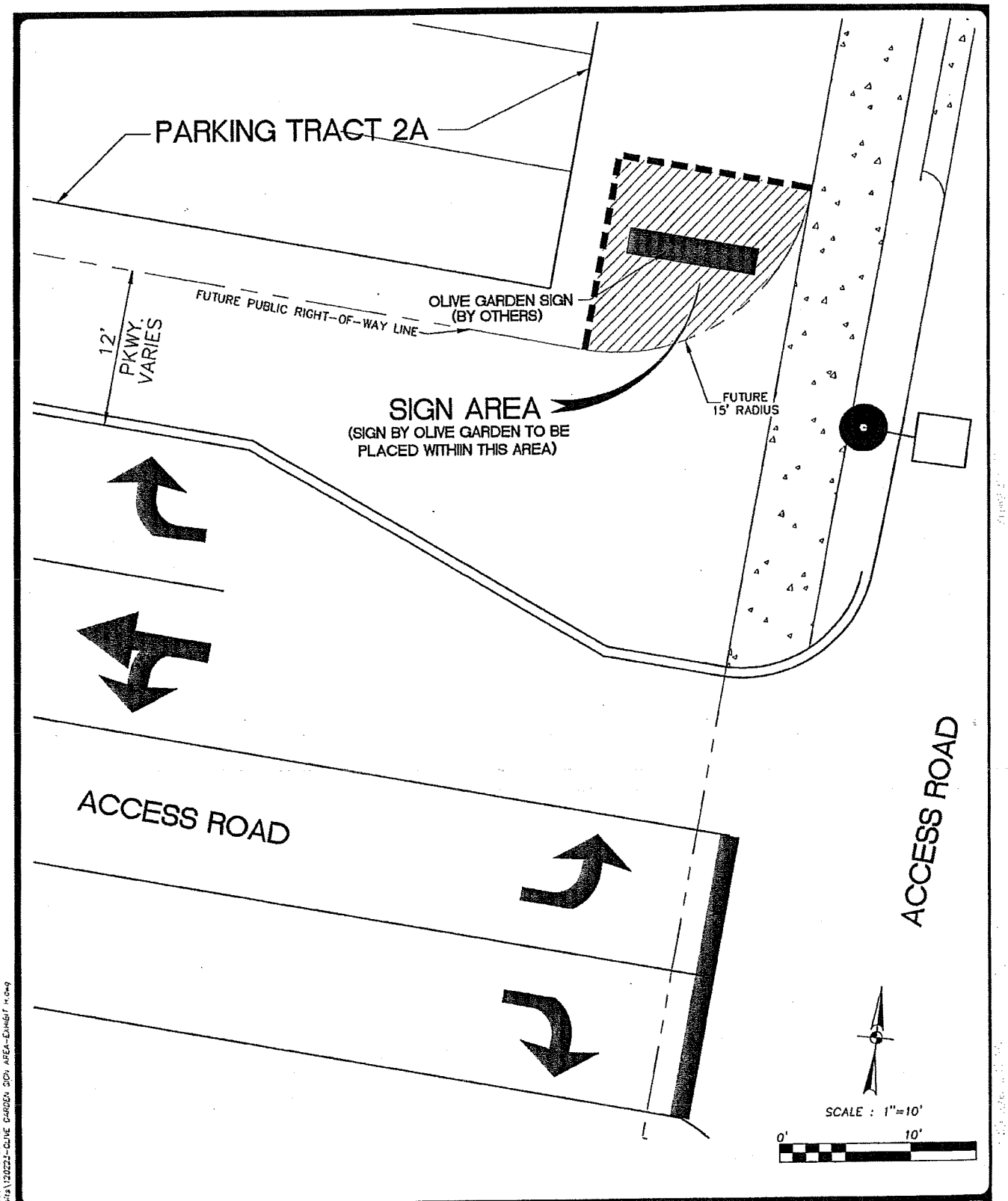


JOB NO. 6984-30

DATE FEBRUARY, 2012

DESIGNER JM

CHECKED DM DRAWN JM

SHEET 1 OF 1

EXHIBIT 'H'

OLIVE GARDEN SIGN AREA

PAPE-DAWSON ENGINEERS

555 EAST RAMSEY | SAN ANTONIO, TEXAS 78216 | PHONE: 210.375.9000 FAX: 210.375.9010

TEXAS BOARD OF PROFESSIONAL ENGINEERS, FIRM REGISTRATION # 470

THIS DOCUMENT HAS BEEN PRODUCED FROM MATERIAL THAT WAS SIGNED AND/OR TRANSMITTED ELECTRONICALLY AND MAY HAVE BEEN INADVERTENTLY ALTERED. RELY ONLY ON FINAL HARDCOPY MATERIALS BEARING THE CONSULTANT'S ORIGINAL SIGNATURE AND SEAL

Date: Mar 07, 2012, 8:44am User ID: Gardner
File: P:\GB\Gb4\19\Design\Embrts\120224-OLIVE GARDEN SIGN AREA-EXHIBIT H.dwg

Exhibit I
Construction Plans

Those certain construction plans and specifications as referenced in the plan index sheet attached hereto.

RACKER ROAD - OLD WINDSOR PARK MALL

INDEX OF DRAWINGS

COVER SHEET
C1. GENERAL NOTES
C2. INDEX / PHASING SHEET

C3. EXISTING DRAINAGE AREA MAP
C4. PROPOSED DRAINAGE AREA MAP
C5. PROPOSED DRAINAGE MAP SUB-AREA "A'
C6. PROPOSED DRAINAGE MAP SUB-AREA "B"
C7. PROPOSED DRAINAGE MAP SUB-AREA "C"
C8. PROPOSED DRAINAGE MAP SUB-AREA "D"
C9. PROPOSED DRAINAGE MAP SUB-AREA "E"
C10. PROPOSED DRAINAGE MAP SUB-AREA "F"
C11. PROPOSED DRAINAGE MAP SUB-AREA "G"
C12. PROPOSED DRAINAGE MAP SUB-AREA "H"

C13. DEMOLITION PLAN (SHEET 1 OF 3)
C14. DEMOLITION PLAN (SHEET 2 OF 3)
C15. DEMOLITION PLAN (SHEET 3 OF 3)

C16. CONN'S DRIVE PLAN & PROFILE STATION 1+00 - 4+33.34
C17. WINDSOR PARKWAY PLAN & PROFILE STATION 1+00 - 6+00
C18. WINDSOR PARKWAY PLAN & PROFILE STATION 6+00 - 11+00
C19. WINDSOR PARKWAY PLAN & PROFILE STATION 11+00 - 16+00
C20. WINDSOR PARKWAY PLAN & PROFILE STATION 16+00 - 20+91.08
C21. RACKER ROAD PLAN & PROFILE STATION 1+00 - 6+00
C22. RACKER ROAD PLAN & PROFILE STATION 6+00 - 11+00
C23. RACKER ROAD PLAN & PROFILE STATION 11+00 - 14+11.01
C24. WINDSOR DRIVE PLAN & PROFILE STATION 1+00 - 5+10
C25. WINDSOR DRIVE PLAN & PROFILE STATION 5+10 - 6+57.11
RACKER EXIT PLAN & PROFILE STATION 1+00 - 2+18.51
C26. FOURWINDS DRIVE PLAN & PROFILE STATION 1+00 - 5+83.73
C27. PARK ROAD DRIVE PLAN & PROFILE 1+00 - 6+00
C28. PARK ROAD DRIVE PLAN & PROFILE 6+00 - 9+06.52
C29. APPLEBEE DRIVE PLAN & PROFILE STATION 1+00 - 4+94.25
C30. DECELERATION LANE PLAN & PROFILE STATION 1+00 - 3+50
C31. OVERALL UTILITY SHEET

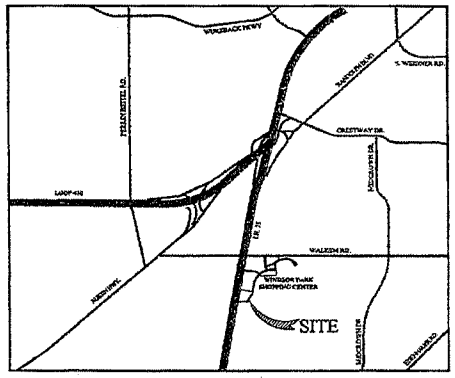
SEWER COLLECTION SYSTEM:

C32. SANITARY SEWER GENERAL NOTES
C33. SEWER PLAN AND PROFILE LINE "A" STATION 1+00 - 6+00
C34. SEWER PLAN AND PROFILE LINE "A" STATION 6+00 - 11+00
C35. SEWER PLAN AND PROFILE LINE "A" STATION 11+00 - 16+00
C36. SEWER PLAN AND PROFILE LINE "A" STATION 16+00 - 18+65.67
C37. SEWER PLAN AND PROFILE LINE "B" STATION 1+00 - 2+84.04
C38. SEWER DETAILS (SHEET 1 OF 2)
C39. SEWER DETAILS (SHEET 2 OF 2)

WATER DISTRIBUTION SYSTEM:

C40. WATER GENERAL NOTES
C41. WATER DISTRIBUTION PLAN (SHEET 1 OF 3)
C42. WATER DISTRIBUTION PLAN (SHEET 2 OF 3)
C43. WATER DISTRIBUTION PLAN (SHEET 3 OF 3)
C44. WATER DETAILS (SHEET 1 OF 3)
C45. WATER DETAILS (SHEET 2 OF 3)
C46. WATER DETAILS (SHEET 3 OF 3)

FOR THE CITY OF WINDCREST
ECONOMIC DEVELOPMENT CORPORATION
BY: DON McCRARY & ASSOCIATES



LOCATION MAP
N.T.S.

WINDCREST, TEXAS

DATE: DECEMBER 2011

PREPARED BY:
Don McCrary & Associates, Inc
ENGINEERS & SURVEYORS
323 Brooksport Street
San Antonio, Texas 78216-2602
(210) 349-2651

PROJECT NO. 09021

FOR CONSTRUCTION

INDEX OF DRAWINGS

C47. DRAIN "A" & DRAIN "C" PLAN & PROFILES
C48. DRAIN "B" PLAN & PROFILE
C49. DRAIN "D" PLAN & PROFILE
C50. DRAINS "E", "F" & "G" PLAN & PROFILES
C51. DRAIN "H" PLAN & PROFILE
C52. DRAINAGE DETAILS (SHEET 1 OF 2)
C53. DRAINAGE DETAILS (SHEET 2 OF 2)

C54. TEMPORARY POLLUTION ABATEMENT GENERAL NOTES
C55. TEMPORARY POLLUTION ABATEMENT PLAN (SHEET 1 OF 3)
C56. TEMPORARY POLLUTION ABATEMENT PLAN (SHEET 2 OF 3)
C57. TEMPORARY POLLUTION ABATEMENT PLAN (SHEET 3 OF 3)
C58. TEMPORARY POLLUTION ABATEMENT DETAILS

C59. MISCELLANEOUS DETAILS
C60. ARMOR CURB DETAIL
C61. HANDICAP RAMP DETAILS

GAS DISTRIBUTION:

G1. GAS DISTRIBUTION PLAN (SHEET 1 OF 3)
G2. GAS DISTRIBUTION PLAN (SHEET 2 OF 3)
G3. GAS DISTRIBUTION PLAN (SHEET 3 OF 3)

LIGHTING:

L1. LIGHTING PLAN (SHEET 1 OF 6)
L2. LIGHTING PLAN (SHEET 2 OF 6)
L3. LIGHTING PLAN (SHEET 3 OF 6)
L4. LIGHTING PLAN (SHEET 4 OF 6)
L5. LIGHTING PLAN (SHEET 5 OF 6)
L6. LIGHTING PLAN (SHEET 6 OF 6)
L7. LIGHTING & SIGNAL DETAILS (SHEET 1 OF 6)
L8. LIGHTING & SIGNAL DETAILS (SHEET 2 OF 6)
L9. LIGHTING & SIGNAL DETAILS (SHEET 3 OF 6)
L10. LIGHTING & SIGNAL DETAILS (SHEET 4 OF 6)
L11. LIGHTING & SIGNAL DETAILS (SHEET 5 OF 6)
L12. LIGHTING & SIGNAL DETAILS (SHEET 6 OF 6)

RETAINING WALL:

R1. RETAINING WALL PLAN
R2. KEYSTONE RETAINING WALL SYSTEMS TYPICAL WALL DETAILS

TRAFFIC CONTROL:

T1. STRIPING & SIGNAGE PLAN (SHEET 1 OF 3)
T2. STRIPING & SIGNAGE PLAN (SHEET 2 OF 3)
T3. STRIPING & SIGNAGE PLAN (SHEET 3 OF 3)
T4. STRIPING DETAILS
T5. CROSSWALK DETAILS
T6. SIGNAGE DETAILS (SHEET 1 OF 2)
T7. SIGNAGE DETAILS (SHEET 2 OF 2)
T8. PROPOSED TRAFFIC SIGNAL
T9. TRAFFIC CONTROL DETAILS (SHEET 1 OF 5)
T10. TRAFFIC CONTROL DETAILS (SHEET 2 OF 5)
T11. TRAFFIC CONTROL DETAILS (SHEET 3 OF 5)
T12. TRAFFIC CONTROL DETAILS (SHEET 4 OF 5)
T13. TRAFFIC CONTROL DETAILS (SHEET 5 OF 5)

Exhibit J
Permitted Exceptions

1. Building set back line, 30 feet wide, along Walzem Road, as shown on plat recorded in Volume 9522, Pages 107-108, Deed and Plat Records of Bexar County, Texas.

2. Building setback line, 120 feet wide, measured from the North boundary line of Camelot Subdivision, Unit 7, along the south property line of Lot 37, as setback line of undetermined width located at the southeast corner of Lot 37, as shown on plat recorded in Volume 9522, Pages 107-108 of the Deed and Plat Records of Bexar County, Texas.

3. Public utility easement, of variable width, along Walzem Road, as dedicated to the City of San Antonio by instrument dated May 14, 1975, recorded in Volume 7599, Page 129 of the Deed Records, and as shown on plat recorded in Volume 9522, Pages 107-108, Deed and Plat Records of Bexar County, Texas.

4. Subsurface gas and electric easement, 20 feet wide, traversing and extending into Lots 37 and 38, as granted to the City of San Antonio by instrument dated July 24, 1975, recorded in Volume 7683, Page 966 of the Deed Records, and as shown on the plat recorded in Volume 9522, Pages 107-108, Deed and Plat Records of Bexar County, Texas.

5. Electric and gas transmission, distribution and service line easement, 20 feet wide within Lot 38, as granted to the City of San Antonio by instrument dated May 18, 1984, recorded in Volume 3216, Page 1141, of the Real Property Records, and as shown on plat recorded in Volume 9522, Pages 107-108, Deed and Plat Records of Bexar County, Texas..

6. Electric and gas transmission, distribution and service line easements, of variable widths, located within Lots 37 and 38, as granted to the City of San Antonio by instrument dated December 4, 1984, recorded in Volume 4906, Page 1394 (File No. 1976667) of the Real Property Records, and as shown on plat recorded in Volume 9522, Pages 107-108, Deed and Plat Records of Bexar County, Texas.

7. Electric and gas transmission, distribution and service line easements. of variable widths, located within Lots 37 and 38, as granted to the City of San Antonio by instrument dated December 4, 1984, recorded in Volume 6902, Page 166 and recorded in Volume 7005, Page 1663, of the Real Property Records of Bexar County, Texas..

8. City Public Service Board Easement, 40 feet wide, along the most eastern east property line of Lot 37, as shown on the plats recorded in Volume 7800, Pages 9-13 and Volume 9522, Pages 107-108, Deed and Plat Records of Bexar County, Texas.

9. Water line easements, 20 feet wide, traversing and extending into Lots 37 and 38, as granted to the City of San Antonio by instrument dated July 24, 1975, recorded in Volume 7653, Page 976 of the Deed Records, as amended by instrument dated April 16, 1976,

recorded in Volume 7803, Page 598 of the Deed Records, as partially vacated by instrument dated June 18, 1984, recorded in Volume 3207, Page 498 of the Real Property Records, and as shown on the plats recorded in Volume 7800, Pages 9-13 and Volume 9522, Pages 107-108, Deed and Plat Records of Bexar County, Texas.

10. Water line easement, 20 feet wide inside Lot 38, as granted to the City of San Antonio by instrument dated June 18, 1984, recorded in Volume 3153, Page 1982 of the Real Property Records, as shown on the plat recorded in Volume 9522, Pages 107-108, Deed and Plat Records of Bexar County, Texas.

11. Water line easement, 20 feet wide, located at the southeast corner of Lot 37, as granted to the City of San Antonio by instrument dated December 4, 1984, recorded in Volume 3351, Page 1166 of the Real Property Records, and as shown on plat recorded in Volume 9522, Pages 107-108, Deed and Plat Records of Bexar County, Texas.

12. Sanitary sewer easements, 16 feet wide, located within Lots 37 and 38, as granted to the City of San Antonio by instrument dated January 17, 1985, recorded in Volume 3352, Page 1925 of the Real Property Records.

13. Sanitary sewer easement, 10 feet wide, along the most eastern east property line of Lot 37, as shown on the plats recorded in Volume 7800, Pages 9-13 and Volume 9522, Pages 107-108, Deed and Plat Records of Bexar County, Texas.

14. Drainage easement, 25 feet wide, located west of, parallel with and adjacent to a portion of the east property line of Lot 37, as shown on plats recorded in Volume 7300, Pages 69-70, Volume 7800, Pages 9-13 and Volume 9522, Pages 107-108, Deed and Plat Records of Bexar County, Texas.

15. Drainage easement, 60 feet wide, located at the southeast corner of Lot 37, as shown on plats recorded in Volume 7300, Pages 69-70, Volume 7800, Pages 9-13 and Volume 9522, Pages 107-108, Deed and Plat Records of Bexar County, Texas.

16. Stormwater drainage easement, of variable width, located within Lots 37 and 38, as granted to the City of San Antonio by instrument dated January 17, 1985, recorded in Volume 3352, Page 1937 of the Real Property Records, and as shown on plat recorded in Volume 9522, Pages 107-108, Deed and Plat Records of Bexar County, Texas.

17. Underground telecommunication easements, of varying widths, located within Lots 37 and 38, as granted to Southwestern Bell Telephone Company by instrument dated June 1984, recorded in Volume 3356, Page 1296 of the Real Property Records, and as shown on plat recorded in Volume 9522, Pages 107-108, Deed and Plat Records of Bexar County, Texas.

18. Non-access easement, 1 foot by 50 feet, along the south boundary of Lot 44, at its intersection with King Arthur Street, as shown on plat recorded in Volume 9551, Pages 187-188, Deed and Plat Records of Bexar County, Texas.

19. Drainage easement, 47 feet wide, along part of the south boundary of Lot 44, as shown on plat recorded in Volume 9551, Pages 187-188, Deed and Plat Records of Bexar County, Texas.

20. Lo Vaca Gathering Co. Easement, 50 feet wide, entering the property at the south boundary of Lot 44, running north and turning west and turning northerly, recorded in Volume 7413, Page 317 and Volume 7425, Page 387, Deed Records of Bexar County, Texas.

21. Drainage easement, 25 feet wide, along the south portion of Lot 44, as shown on plat recorded in Volume 9551, Pages 187-188, Deed and Plat Records of Bexar County, Texas.

22. Existing drainage easement, 60 feet wide, entering Lot 44 at the west boundary and running east, as shown on plat recorded in Volume 9551, Pages 187-188, Deed and Plat Records of Bexar County, Texas.

23. Overhang easement, 4 feet wide, adjacent to the west boundary of Lot 44, as shown on plat recorded in Volume 9551, Pages 187-188, Deed and Plat Records of Bexar County, Texas.

24. Sanitary sewer easement, 10 feet wide, across the most easterly portion of Lot 44, as shown on plat recorded in Volume 9551, Pages 187-188, Deed and Plat Records of Bexar County, Texas.

25. Easement Agreement with the City of San Antonio, recorded in Volume 4906, Page 1394, Real Property Records of Bexar County, Texas.

26. Building setback lines, 120 feet from the south boundary of Lot 44, 30 feet from the west boundary along I.H. 35 of Lot 44, and 15 feet from the north boundary along Walzem Road line of Lot 44, as shown on plat recorded in Volume 9551, Pages 187-188, Deed and Plat Records of Bexar County, Texas.

27. Building setback line, 15 feet wide, increasing to 30 feet wide, along the Walzem Road property line, as shown on plat recorded in Volume 9522, Pages 105-106, Deed and Plat Records of Bexar County, Texas.

28. Drainage easement, 15 feet wide, and 100.72 feet in length, located at the most northwest corner of the subject property, as shown on plat recorded in Volume 9522, Pages 105-106, Deed and Plat Records of Bexar County, Texas.

29. Pipeline right-of-way, 50 feet wide, traversing the western portion of the subject property, granted to Magnolia Gas Company, by instruments recorded in Volume 1107, Page 478 and Volume 1107, Page 485, Deed Records of Bexar County, Texas, additionally supplemented by instruments recorded in Volume 3405, Page 297 and Volume 3589, Page

371, Deed Records of Bexar County, Texas, as conveyed to Lo-Vaca Gathering Company by instrument recorded in Volume 5905, Page 447, Deed Records of Bexar County, Texas, as initially defined by instructed recorded as Volume 5159, Page 661, as further defined by instrument executed in multiple counterparts as recorded in Volume 7413, Page 317 and Volume 7425, Page 387, Deed Records of Bexar County, Texas, and as shown on plat recorded in Volume 9522, Pages 105-106, Deed and Plat Records of Bexar County, Texas.

30. Public utility easement, of variable width, along Walzem Road property line, as dedicated to the City of San Antonio, by instrument dated May 12, 1975, recorded in Volume 7599, Page 111, Deed Records of Bexar County, Texas, and as shown on plat recorded in Volume 9522, Pages 105-106, Deed and Plat Records of Bexar County, Texas.

31. Building setback line, 25 feet wide, along the front property line, as shown on plat recorded in Volume 7800, Pages 9-13, Deed and Plat Records of Bexar County, Texas.

32. Overhang easement, 4 feet wide, along the front property line, as shown on plat recorded in Volume 7800, Pages 9-13, Deed and Plat Records of Bexar County, Texas.

33. Gas and electric easement, 20 feet wide, as shown on plat recorded in Volume 7800, Pages 9-13, Deed and Plat Records of Bexar County, Texas.

34. Lo Vaca Gathering Co. gas easement, 50 feet wide, as shown on plat recorded in Volume 7800, Pages 9-13, Deed and Plat Records of Bexar County, Texas, and recorded in Volume 7425, Page 387, Deed Records of Bexar County, Texas.

35. Memorandum of Ground Lease recorded in Volume 13039, Page 2252, Real Property Records of Bexar County, Texas.

AGREEMENT REGARDING
RECIPROCAL EASEMENTS, RESTRICTIONS, COVENANTS AND CONDITIONS AND MEMORANDUM OF PURCHASE OPTION

This Agreement Regarding Reciprocal Easements, Restrictions, Covenants and Conditions and Memorandum of Purchase Option (this "**Agreement**") is made and entered into effective as of the ____ day of _____, 2012 (the "**Effective Date**"), by and between (i) RACKSPACE US, INC., a Delaware corporation ("**Rackspace**"), and (ii) James C. Niemann, Trustee for THE NFP PARTNERSHIP, a Texas limited partnership ("**NFP**"); and consented to by WINDCREST ECONOMIC DEVELOPMENT CORPORATION ("**Windcrest**").

ARTICLE 1.

Recitals

1.1 **Rackspace Parcel**. Windcrest is the Owner of certain real property in the City of Windcrest, Bexar County, Texas, more particularly described on **Exhibit A** attached hereto (the "**Rackspace Parcel**") and Rackspace is the ground lessee thereof.

1.2 **NFP Parcels**. NFP is the Owner of certain real property in the City of Windcrest, Bexar County, Texas located to the northwest of the Rackspace Parcel, more particularly described on **Exhibit B** attached hereto (the "**Northwest Outparcel**"). NFP is also the Owner of certain real property in the City of Windcrest, Bexar County, Texas located to the south of the Rackspace Parcel, more particularly described on **Exhibit C** attached hereto (the "**South Parcel**")(the Northwest Outparcel and the South Parcel are collectively referred to herein as the "**NFP Parcels**"). NFP has the authority to enter into this Agreement as to the NFP Parcels, without the joinder of any other party, including without limitation, any Occupant, Permittee or mortgagee of the NFP Parcels (except for the specific consents attached hereto and made a part hereof for all purposes).

1.3 **Purpose**. The parties hereto desire to subject the Rackspace Parcel and the NFP Parcels to certain specifically defined easements, covenants, conditions and restrictions, pursuant to which the same shall be held, improved and conveyed.

NOW, THEREFORE, in consideration of the premises, the sum of Ten and No/100 Dollars ($10.00), and other good and valuable consideration in hand paid, and in consideration of the mutual agreements herein made, the receipt and sufficiency of which are hereby acknowledged, the undersigned hereby agree as follows:

ARTICLE 2.

Definitions

2.1 **Access Road 1**. That certain publicly dedicated road to be constructed on the Rackspace Parcel and known as "Windsor Drive", in the location depicted on the Site Plan as the "Access Road 1", as the same exist from time to time and as modified from time to time.

2.2 **Access Road 2**. That certain publicly dedicated road to be constructed on the Rackspace Parcel and known as "Fourwinds Drive, in the location depicted on the Site Plan as the "Access Road 2", as the same exist from time to time and as modified from time to time.

2.3 **Access Road 3**. That certain publicly dedicated road to be constructed on the Rackspace Parcel, in the location depicted on the Site Plan as the "Access Road 3", as the same exist from time to time and as modified from time to time.

2.4 **Completion Date**. The later of (i) the date of final completion of the Access Roads and parking reconfiguration work set forth in Section 3.2 below, as evidenced by a certificate of final completion from the engineers of the Owner of the Rackspace Parcel, and (ii) the date upon the Access Roads are dedicated to the public. Within sixty (60) days after the Completion Date, Windcrest and Rackspace shall cause to be prepared and recorded an amendment to this Agreement ("**Amendment**") attaching the final legal descriptions of Tract 1, Tract 2, Tract 3 and Tract 4 as **Exhibits E-1, E-2, E-3 and E-4** respectively.

2.5 **Occupant**: Any Person, from time to time, entitled to the use and occupancy of any portion of the Property under any lease, sublease, license, concession or other similar agreement.

2.6 **Owner**: The owner of any portion of the Property, its successor or assigns. For purposes hereof, Rackspace, as the ground lessee of the Rackspace Parcel under the Rackspace Lease shall be deemed the Owner of the Rackspace Parcel.

2.7 **Parcel**. Any of the Rackspace Parcel, the Northwest Outparcel, or the South Parcel.

2.8 **Party**. Each of Rackspace and NFP.

2.9 **Permittee**: All Owners, Occupants and the partners, officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees and licensees of Owners and Occupants.

2.10 **Person**: Individuals, partnerships, firms, associations, corporations, trusts, governmental agencies, administrative tribunals or any other form of business or legal entity.

2.11 **Property**. The Rackspace Parcel, the Northwest Outparcel, and the South Parcel, collectively.

2.12 **Rackspace Lease**. That certain Ground Lease Agreement dated August 2, 2007, as amended from time to time, by and between Windcrest Economic Development Corporation, on behalf of the City of Windcrest, as landlord, and Rackspace, as tenant.

2.13 **Site Plan**. That certain drawing of the Property attached hereto as **Exhibit D** and made a part hereof.

2.14 **Tract 1**. That certain portion of the Rackspace Parcel, in the location depicted on the Site Plan as "Tract 1", to be more particularly described in **Exhibit E-1** to be attached hereto and made a part hereof for all purposes in the Amendment.

2.15 **Tract 2**. That certain portion of the Rackspace Parcel, in the location depicted on the Site Plan as "Tract 2", to be more particularly described in **Exhibit E-2** to be attached hereto and made a part hereof for all purposes in the Amendment. The legal description to be contained in Exhibit E-2 shall also be deemed incorporated into the Option Agreement as set forth in **Article 6** below.

2.16 **Tract 3.** That certain portion of the Rackspace Parcel, in the location depicted on the Site Plan as "Tract 3", to be more particularly described in **Exhibit E-3** to be attached hereto and made a part hereof for all purposes in the Amendment.

2.17 **Tract 4.** That certain portion of the Rackspace Parcel, in the location depicted on the Site Plan as "Tract 4", to be more particularly described in **Exhibit E-4** to be attached hereto and made a part hereof for all purposes in the Amendment.

ARTICLE 3.

Easements

3.1 **Access Easements**. Rackspace, as the current Owner of Tract 1, Tract 2 and Tract 4, and NFP, as the current Owner of the Northwest Outparcel (and as the future owner of Tract 2 in the event it exercises its Purchaser Option as set forth in Article 6 below), do hereby dedicate and create the following easements, for the benefit of the Owner(s) of the Northwest Outparcel, Tract 1, Tract 2 and Tract 4 and their respective Occupants and Permittees, as applicable (collectively, the "**Access Easements**"):

(i) a non-exclusive access easement, appurtenant to the Northwest Outparcel, for ingress and egress by vehicular and pedestrian traffic to and from the Northwest Outparcel across Tract 2 to the curb cut connecting into Access Road 1, in approximately the location depicted on the Site Plan, as the same exists from time to time, subject to the requirements of applicable law and the terms, provisions and conditions hereof;

(ii) a non-exclusive access easement, appurtenant to the Northwest Outparcel, for ingress and egress by vehicular and pedestrian traffic to and from the Northwest Outparcel across Tract 2 to the curb cut connecting into Access Road 2, in approximately the location depicted on the Site Plan, as the same exists from time to time, subject to the requirements of applicable law and the terms, provisions and conditions hereof;

(iii) a non-exclusive access easement, appurtenant to Tract 2, for ingress and egress by vehicular and pedestrian traffic to and from Tract 2 across the Northwest Outparcel to the curb cut connecting into Walzem Road, in approximately the location depicted on the Site Plan, as the same exists from time to time, subject to the requirements of applicable law and the terms, provisions and conditions hereof;

(iv) a non-exclusive, perpetual access easement, appurtenant to Tract 1, for ingress and egress by vehicular and pedestrian traffic to and from Tract 1 across Tract 2 to the curb cut connecting into Access Road 2, in approximately the location depicted on the Site Plan, as the same exists from time to time, subject to the requirements of applicable law and the terms, provisions and conditions hereof;

(v) a non-exclusive, perpetual access easement, appurtenant to Tract 4, for ingress and egress by vehicular and pedestrian traffic to and from Tract 4 across Tract 2 to the curb cut connecting into Access Road 2, in approximately the location depicted on the Site Plan, as the same exists from time to time, subject to the requirements of applicable law and the terms, provisions and conditions hereof (the access easements described in clauses (iv) and (v) of this Section 3.1 being collectively referred to as the "**Permanent Access Easements**").

The parties acknowledge and agree that the locations of the foregoing Access Easements depicted on the Site Plan is approximate only; the parties may mutually agree to relocate one or more of such Access Easements to alternative locations along the common boundaries of their respective Parcel (provided, however, that reasonably similar alternative access is provided between the Parcels); whereupon the parties shall execute and record in the real property records of Bexar County, Texas, a memorandum specifying such alternative locations(s), as applicable.

In the event the Owner of the Northwest Outparcel elects to redevelop the Northwest Outparcel, as determined by the Owner of the Northwest Outparcel in its sole discretion, the Owner of the Northwest Outparcel shall have the right to unilaterally elect to terminate one or more of the Access Easements set forth in clauses (i), (ii) or (iii) of this Section 3.1 above by providing written notice of the same to the Owners of Tract 1, Tract 2 and Tract 4 (whereupon the Owner of the Northwest Parcel shall unilaterally execute and record in the real property records of Bexar County, Texas, a memorandum confirming the termination of the same).

Notwithstanding the foregoing or anything herein to the contrary the Owner of the Northwest Parcel shall have no right whatsoever to terminate the Permanent Access Easements set forth in clauses (iv) and (v) of this Section 3.1 above, which provided critical access for Tract 1 and Tract 4 to and from Access Road 2.

3.2 **Parking Easements**. Rackspace, as the current Owner of Tract 1, Tract 2 and Tract 4, and NFP as the current Owner of the Northwest Outparcel (and as the future owner of Tract 2 in the event it exercises its Purchaser Option as set forth in Article 6 below) do hereby create the following easements, for the benefit of the Owner(s) of the Northwest Outparcel, Tract 1, Tract 2 and Tract 4 and their respective Occupants and Permittees (collectively, the "**Parking Easements**"):

(i) a non-exclusive easement, appurtenant to the Northwest Outparcel, for parking, upon the parking area constructed from time-to-time on Tract 2, in common with the Owner of the Rackspace Parcel and its Occupants and Permittees, subject to the requirements of applicable law and the terms, provisions and conditions hereof; and

(ii) a non-exclusive easement, appurtenant to Tract 1 and Tract 4, for parking, upon the parking area constructed from time-to-time on Tract 2, in common with the Owner of the Rackspace Parcel and its Occupants and Permittees, subject to the requirements of applicable law and the terms, provisions and conditions hereof.

The parties acknowledge and agree that the Owner of the Rackspace Parcel intends to redevelop Tract 2 in accordance with **Exhibit F** attached hereto and made a part hereof for all purposes. The Owner of the Rackspace Parcel shall construct, or caused to be constructed, without any cost or expense to the Owner of the Northwest Outparcel, the following: (i) installing curbing in the locations depicted on Exhibit "F" and (ii) restriping the parking areas on Tract 2 in the configuration shown on **Exhibit F.**

Notwithstanding the creation of the foregoing Parking Easements and the rights of the Owner of the Rackspace Parcel to redevelop Tract 2 as set forth above, (i) the Owner of the Rackspace Parcel acknowledges and agrees that it shall not include the parking spaces on Tract 2 towards satisfying any required minimum parking ratios for Tract 1 and/or Tract 4 of any applicable governmental authority; and (ii) in the event the Owner of the Northwest Outparcel elects to redevelop the Northwest Outparcel, as determined by the Owner of the Northwest Outparcel in its sole discretion, the Owner of the Northwest Outparcel shall have the right to unilaterally elect to terminate one or more of the Parking Easements set forth in this Section 3.2 above by providing written notice of the same to the Owners of Tract 1 and Tract 4 (whereupon the parties shall execute and record in the real property records of Bexar County, Texas, a memorandum confirming the termination of the same).

3.3 **Truck Access Easement for South Parcel**. Rackspace, as the Owner of the Rackspace Parcel, does hereby GRANT, SELL and CONVEY unto the Owner of the South Parcel for the benefit of the Owner of the South Parcel and its respective Occupants and Permittees, a non-exclusive access easement, appurtenant to the South Parcel, for ingress and egress to and from the South Parcel by delivery trucks accessing the rear of any building located on the South Parcel to Access Road 3 across the portion of the Rackspace Parcel depicted on the Site Plan as "Service Road", as the same exists from time to time, subject to the requirements of applicable law and the terms, provisions and conditions hereof (the "**Truck Access Easement**"). The Owner of the South Parcel expressly acknowledges and agrees that (i) the Service Road is not open to the public and access thereto is limited by a controlled access gate, (ii) the foregoing easement does not grant to any party the right of ingress and egress for pedestrians or passenger vehicles, (iii) access to the Service Road is limited to delivery trucks actively involved in making deliveries to the rear of any buildings on the South Parcel for businesses located on the South Parcel.

The Access Easements, Parking Easements and Truck Access Easement are collectively referred to herein as the "Access and Parking Easements".

3.4 **Limitations on Access and Parking Easements**. Nothing contained in this Agreement shall be construed as granting to any Owner of the NFP Parcels and/or their respective Occupants and Permittees (i) any right to park upon the Rackspace Parcel or any other property, other than the Parking Easements described above, subject to the terms, provisions and conditions hereof; (ii) any right to access any other portion of the Rackspace Parcel or any other

property, other than the Access Easements described above, subject to the terms, provisions and conditions hereof; (iii) the right to construct buildings or any other improvements on the Access and Parking Easements, Rackspace Parcel or any other property. Moreover, the Access and Parking Easements granted above are limited to the specific portions of the Parcels described above and limited to the specific Owners, Occupants and Permittees described above and shall not in any manner be deemed as creating general reciprocal access between the Rackspace Parcel and the NFP Parcels.

3.5 **Permitted Exceptions**. The Access and Parking Easements described herein are conveyed and reserved subject to any and all other restrictions, easements, utility lines, or other matters or easements affecting the Property (collectively, the "Permitted Exceptions"). Any mortgage loans or deeds of trust now or hereafter obtained by either party secured in whole or in part by any portion of the Property shall be subordinate to this Agreement.

3.6 **Retention of Ownership**. Each Owner herein retains, reserves and shall continue to enjoy fee simple/leasehold ownership (as applicable), and the surface and subsurface, of its dominant, leasehold estate in its respective Parcel, including easement areas, for any and all purposes which do not unreasonably interfere with and prevent the use of the Access and Parking Easements, and for the benefit of itself, and its respective successors and assigns, the right to use the surface and subsurface of such portions of its Parcel, including easement areas, as may be necessary for the installation, operation, maintenance, repair, replacement, removal and relocation of underground storm sewer lines, sanitary sewer pipes, water and gas mains, electric power lines, telephone and cable T.V. lines, and other like uses which do not unreasonably interfere with and prevent the use of the Access and Parking Easements as contemplated herein.

ARTICLE 4.

Maintenance and Repair.

4.1 **Maintenance and Repair of the Access Roads**. The Owner of the Rackspace Parcel shall maintain and repair, at its sole cost and expense, the Access Roads, so as to keep improved portions of the Access Roads, as may exist from time-to-time, at all times in a safe, sightly, good and functional condition to the same standard as the driveways on the remainder of the Rackspace Parcel; provided, however, that (i) nothing contained herein shall be deemed to obligate the Owner of the Rackspace Parcel to construct any new improvements on the Rackspace Parcel and/or redevelop the Rackspace Parcel (or any portion thereof); and (ii) the Owner of the Rackspace Parcel may dedicate the Access Roads to the City of Windcrest or other applicable governmental entity as a publicly dedicated street, whereupon such maintenance and repair obligations shall be transferred to the appropriate governmental entity.

4.2 **Maintenance and Repair of Access and Parking Easements**. Each Owner shall maintain and repair (or cause its respective Occupant to maintain and repair) the portions of the Access and Parking Easements located on its respective Parcels, at its sole cost and expense, so as to keep improved portions of the same, as may exist from time-to-time, at all times in a safe, sightly, good and functional condition to the same standard as the driveways, parking areas, landscaping and

improvements on the remainder of the Rackspace Parcel, and (ii) insure the portions of the Access and Parking Easements located on its respective Parcels, in accordance with Article 7 below, and pay all ad valorem and other taxes applicable thereto (if and when the same are due).

ARTICLE 5

No Build Area

5.1. **No Build Area on Tract 3**. Rackspace hereby agrees that no permanent buildings or other commercial structures (including canopies, supports, loading docks, truck ramps, and other outward extensions of such structures) shall be constructed on Tract 3 (the "**No Build Area**"; provided, however, that the foregoing shall in no event be deemed to prohibit the construction and operation of parking areas, driveways, curbing, utilities, landscaping, and any other use that would not materially impair the visibility of the Northwest Outparcel from traffic traveling north on the portion of the publicly dedicated street to the southeast of Tract 3.

ARTICLE 6

Memorandum of Purchase Option

6.1 As of the date hereof, the parties have entered into an Option Agreement, pursuant to which Windcrest and Rackspace have granted to NFP an option to purchase Tract 2 (the "***Purchase Option***"), in strict accordance with the terms, provisions and conditions thereof. The Purchase Option Agreement contains numerous other provisions affecting the rights of the parties; the enumeration of the provisions set forth above is not intended to be inclusive of all provisions in the Purchase Option Agreement. This memorandum does not alter, amend or modify the Purchase Option Agreement, but is executed for the purpose of recording a memorandum thereof in the Real Property Records of Bexar County, Texas, to give notice to third parties of the Purchase Option granted in the Purchase Option Agreement, to which reference is here made for a full description of the rights of the parties. In the event of any conflict between the terms of the Purchase Option Agreement and this memorandum thereof, the Purchase Option Agreement shall control. Upon the termination or expiration of the Purchase Option, either party may request that the other execute a memorandum confirming the termination thereof and record the same in the real property records of Bexar County, Texas.

ARTICLE 7.

Insurance and Indemnity

7.1 **Insurance**. The Owner of the Northwest Outparcel and the Owner of the South Parcel shall maintain, or cause to be maintained, as to its respective Parcel and the portion of the Access and Parking Easements located thereon, public liability insurance insuring against claims on account of lost life, bodily injury or property damage that may arise from, or be occasioned by the condition, it use or occupancy of the Property and the Access and Parking Easements granted herein, or caused by such Owner, its Occupants, and the respective Permittees of such Owner and Occupant or caused by those persons for whose acts and omissions such Owner, its Occupants, and

their respective Permittees are legally liable. Each Owner of the Northwest Outparcel and the Owner of the South Parcel shall obtain insurance policies, according to the provisions hereof, covering the Property and the Access and Parking Easements granted herein from a reputable insurance company or companies qualified to do business in the State of Texas; and each such policy of insurance shall have limits of not less than $1,000,000.00 for each occurrence. Such insurance may be carried under a "blanket" policy or "blanket" policies covering other properties of each respective party, and may be subject to such self-insured retentions as a Party may desire. Each Owner of the Northwest Outparcel and the Owner of the South Parcel shall, upon written request from the Owner of the Rackspace Parcel, furnish to the Owner of the Rackspace Parcel one or more certificates of insurance evidencing the existence of the insurance required above.

ARTICLE 8.

Remedies

8.1 **Self Help and Other Remedies**. If any Party defaults in the performance of its obligations hereunder and the default is not cured within thirty (30) days following delivery of written notice to such defaulting party then the non-defaulting Party shall have the right to (i) perform such obligation on behalf of the defaulting Party, in which event such defaulting Party shall reimburse such non-defaulting party for all amounts expended by the non-defaulting party on behalf of the defaulting Party, together with interest thereon at the lesser of twelve percent (12%) per annum, or the maximum amount permitted by law from the date the amounts are expended until the date repaid; and/or (ii) exercise any other rights or remedies available to the non-defaulting Party either at law or in equity.

8.2 **Injunctive Relief**. In the event of a breach by any party hereto of any obligation of such party under this Agreement, the non-defaulting Party shall be entitled to injunctive relief mandating compliance herewith, and shall be entitled to obtain a decree specifically enforcing the performance of the obligations created hereunder. The undersigned hereby acknowledge and stipulate the inadequacy of legal remedies and irreparable harm which would be caused by the breach of this Agreement, and such non-defaulting party shall be entitled to relief by any and all other available legal and equitable remedies from the consequences of such breach. Any costs and expenses of any such proceeding, including reasonable attorney's fees, shall be paid by the defaulting party.

8.3 **Non-Waiver**. No delay or omission of any party hereto in the exercise of any rights created hereunder shall impair such right, or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of an event of default hereunder. A waiver by any party hereto of a breach of, or default in, any of the terms and conditions of this Agreement by the other party shall not be construed to be a waiver of any subsequent breach thereof or of any other provision of this Agreement. Except as otherwise specifically provided in this Agreement, no remedy provided in this Agreement shall be exclusive, but instead all remedies shall be cumulative with all other remedies provided for in this Agreement and all other remedies at law or in equity which are available to the parties hereto.

ARTICLE 9.

Notices

9.1 **Notices**. All notices, demands, statements, and requests (collectively the "Notice") required or permitted to be given under this Agreement must be in writing and shall be deemed to have been properly given or served as of the date hereinafter specified: (i) on the date of personal service upon the Party to whom the notice is addressed or if such Party is not available the date such notice is left at the address of the Party to whom it is directed, (ii) on the date the notice is postmarked by the United States Post Office, provided it is sent prepaid, registered or certified mail, return receipt request, and (iii) on the date the notice is delivered by a courier services (including Federal Express, Express Mail, Lone Star or similar operation) to the address of the Party to whom it is directed, provided it is sent prepaid, return receipt requested. The address of the signatories to this Agreement is set forth below:

If to Rackspace:	Rackspace Hosting Attn: General Counsel 5000 Walzem San Antonio, Texas 78218 Telephone No.: 210-312-4700 Fax No.: 210-312-4848
With a copy to:	Steve Golden Golden Steves Cohen and Gordon LLP 300 Convent Street, Suite 2600 San Antonio, Texas 78205 Telephone No.: (210) 745 3700 Fax No.: (210) 745 3737
If to NFP:	James C. Niemann, Trustee 1122 Colorado Street, Suite 313 Austin, Texas 78701 Attn: Fred Niemann, Jr. Telephone No.: (512) 474 6901 Email: fred.niemann@gmail.com
If to Windcrest:	Ray Watson Director of Economic Development 8601 Midcrown Windcrest, Texas 78239 Telephone No.: _____ Fax No.: 210-655-8776

ARTICLE 10.

General Provisions

10.1 **Binding Effect**. The Parties hereby agree that (i) the terms, provisions and conditions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective Permittees, as well as the successors and assigns of such Persons; and (ii) the easements and restrictive covenants shall be appurtenant to and for the benefit of all the Owners and their successors and assigns and shall run with the land for the time periods set forth herein. This Agreement shall be construed in accordance with the laws of the State of Texas and all obligations hereunder are performable in Bexar County, Texas. This Agreement and the rights, obligations and duties hereunder shall be fully assignable by Rackspace to any assignee or sublessee under the Rackspace Lease.

10.2 **Partial Invalidity**. If any term, covenant or condition of this Agreement or the application of it to any Person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant or condition to Persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and shall be enforced to the extent permitted by law.

10.3 **Captions**. The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants or conditions contained herein.

10.4 **Gender**. In construing the provisions of this Agreement and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

10.5 **Relationship of the Parties**. Nothing contained herein shall be construed to make the parties hereto partners or joint venturers, or render any of such parties liable for the debts or obligations of the other party hereto.

10.6 **Amendment**. This Agreement may be canceled, changed, modified or amended in whole or in part only by the written and recorded agreement of Parties hereto, or their respective successors and assigns. In no event shall any amendment of this Agreement ever require the consent or joinder of any one or more of the agents, patrons, customers, employees, licensees or invitees of the Property.

10.7 **Term**. This Agreement and the easements, rights, obligations and liabilities created hereby shall encumber the Property for a period of fifty (50) years, or such lesser period if and to the extent a lesser period is required by applicable law, and thereafter the terms hereof shall be renewed automatically for successive ten (10) year periods unless all Owners and any parties owning at that time any security interest in any of the Parcels execute and record in the Bexar County, Texas, real estate records at any time a statement terminating this Agreement;

except as otherwise provided in Section 3.1 and 3.2 as to the earlier termination of some of the Access and Parking Easements.

10.8 **No Dedication**. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property to the general public or for the general public or for any public purpose whatsoever, it being the intention that this Agreement shall be strictly limited to and for the purposes herein expressed. This Agreement is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not specifically benefited by the terms and provisions hereof, nor are any easement rights granted to a party hereunder assignable to any third party.

Notwithstanding the foregoing, nothing contained in this Agreement shall prohibit the Owner of the Rackspace Parcel, its successors or assigns from dedicating or transferring, as applicable, all or any part of the easement areas on the Rackspace Parcel, including, without limitation, the Access Roads, to (i) an appropriate governmental entity, the effect of which would create a public street on the easement areas so dedicated, with maintenance and repair responsibilities transferring to the appropriate governmental entity, or (ii) a property owner's association, with maintenance and repair responsibilities transferring to the property owner's association.

10.9 **Counterparts**. This Agreement may be executed in any number of counterparts and each such counterpart hereof shall be deemed to be an original instrument, but all of such counterparts shall constitute but one Agreement.

10.10 **Attorneys Fees**. In the event any legal action or proceeding for the enforcement of any right or obligations herein contained is commenced, the prevailing party in such action or proceeding shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

[Separate Signature Pages Follow]

EXECUTED effective as of the Effective Date.

RACKSPACE US, INC.
a Delaware corporation

By: _____
Name: _____
Title: _____

THE STATE OF _____ §
§
COUNTY OF _____ §

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, the _____ of Rackspace US, Inc., a Delaware corporation, on behalf of said corporation.

_____
Notary Public in and for
The State of _____

[Signature Pages Continue]

James C. Niemann, Trustee for
The NFP Partnership,
a Texas limited partnership

By: _____
Name: James C. Niemann
Title: Trustee

STATE OF TEXAS §
§
COUNTY OF _____ §

This instrument was acknowledged before me the ___ day of _____, 2012, by James C. Niemann, Trustee for The NFP Partnership, a Texas limited partnership, on behalf of said limited partnership.

_____
Notary Public, in and for
The State of Texas

After recording return to:

Smita Bhakta
Golden Steves Cohen & Gordon LLP
300 Convent Street, Suite 2600
San Antonio, Texas 78205

Joinder of Windcrest

Windcrest Economic Development Corporation ("**Windcrest**") is the fee simple owner of the Rackspace Parcel, which is leased by Windcrest to Rackspace pursuant to that certain Ground Lease Agreement dated August 2, 2007, as amended from time to time. Windcrest joins in the execution of this Agreement as the current fee simple owner of the Rackspace Parcel for the purpose of subjecting the Rackspace Parcel to the terms, provisions and conditions of this Agreement.

WINDCREST:

WINDCREST ECONOMIC DEVELOPMENT CORPORATION

By: _____
Name: _____
Title: _____

THE STATE OF _____ §
§
COUNTY OF _____ §

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, the _____ of Windcrest Economic Development Corporation, on behalf of said corporation.

_____
Notary Public in and for
THE STATE OF _____

EXHIBIT A

BEGINNING at a 3/4" iron rod found in the east line of Interstate Highway (IH) 35/ Loop 410 (R.O.W. Varies), also being the southwest corner of said Lot 44, and being the northwest corner of Lot 36, of the Replat of Toys "R" Us Subdivision, recorded in Volume 9520, Page 187, (D.P.R.B.C.T.), for the southwest corner and POINT OF BEGINNING hereof, from which a 4" Texas Department of Transportation (TXDOT) brass disk monument found in the east line of said IH 35/ Loop 410 at station 1882+00 and offset right 213.20', bears S09°56'18"W, a distance of 454.36 feet;

THENCE, with the east line of said IH 35/ Loop 410, same being the west line of said Lot 44, N09°56'18"E, a distance of 437.50 feet to 1/2-inch iron rod found for an angle point hereof, same being the southwest corner of Lot 45 of said Replat Establishing Simon Apple Garden;

THENCE, leaving the east line of said IH 35/ Loop 410, same being the west line of said Lot 44, with the common line between said Lots 44 and 45, the following five (5) courses and distances:

1) S80°21'18"E, a distance of 217.15 feet to a PK nail found for an angle point hereof, same being the southeast corner of said Lot 45, and a southeast corner of said Lot 44;
2) N10°05'00"E, a distance of 147.36 feet to a 1/2-inch iron rod found for an angle point hereof, same being a northeast corner for said Lot 45, also being an angle point for said Lot 44;
3) N80°16'37"W, a distance of 22.47 feet to a 1/2-inch iron rod found for an angle point hereof, same being an angle point for said Lots 44 and 45;
4) N09°43'58"E, a distance of 9.05 feet to a 1/2-inch iron rod found for an angle point hereof, same being a northeast corner for said Lot 45, also being an angle point for said Lot 44;
5) N80°08'26"W, a distance of 195.02 feet to a 1/2-inch iron rod found for an angle point hereof, same being the northwest corner of said Lot 45, also being an angle point of said Lot 44, same being a point in the east line of said IH 35/ Loop 410;

THENCE, with the east line of said IH 35/ Loop 410, same being the west line of said Lot 44, N09°56'18"E, a distance of 64.23 feet to a 1/2-inch iron rod with "Vickery" cap found for an angle point hereof, same being the southwest corner of Lot 46 of said Replat Establishing Simon Apple Garden, also being an angle point for said Lot 44;

THENCE, leaving the east line of said IH35/ Loop 410, same being the west line of said Lot 44, with the common line between said Lots 44 and 46, S80°07'28"E, a distance of 225.13 feet to a 1/2-inch iron found for an angle point hereof, same being the southeast corner of said Lot 46, also being an angle point for said Lot 44;

THENCE, continuing with the common line between said Lots 44 and 46, N09°56'34"E, a distance of 230.05 feet a 1/2-inch iron rod found for an angle point hereof, same being the northeast corner of said Lot 46, same being an angle point for said Lot 44;

THENCE, crossing through said Lot 24, S80°02'51"E, a distance of 37.96 feet to a PK nail found for an angle point hereof, same being an angle point for said 11.5384 acre tract, also being an angle point for said Lot 44;

THENCE, continuing through said Lot 24, with a north line of said 11.5384 acre tract, N89°45'32"E, a distance of 103.11 feet to a PK nail found for an angle point hereof, same being an angle point of said 11.5384 acre tract, said point lies within said Lot 24;

THENCE, continuing through said Lot 24, with a west line of said 11.5384 acre tract, N00°36'38"E, a distance of 327.41 feet to a PK nail found for an angle point hereof, same being an angle point of said 11.5384 acre tract, said point lies within said Lot 24;

THENCE, continuing through said Lot 24, with a south line of said 11.5384 acre tract, N80°48'25"W, a distance of 311.55 feet to a PK nail found for an angle point hereof, same being an angle point of said 11.5384 acre tract, and being a point in the west line of said Lot 24, also being a point in the east line of said IH35/ Loop 410;

THENCE, with the west line of said Lot 24, same being the east line of said IH 35/ Loop 410, N09°56'18"E, a distance of 54.60 feet to a 1/2-inch iron rod with "Doucet & Assoc," cap set for a northwest corner hereof, same being a northwest corner of said Lot 24, and the southwest corner of Lot 22 of the Simon Subdivision recorded in Volume 7300, Page 69, (D.P.R.B.C.T.);

THENCE, with the south line of said Lot 22, and the north line of said Lot 24, N85°26'50"E, a distance of 381.62 feet to a PK nail with "Brown" shiner found for a point of curvature (P.C.) hereof, same being a P.C. for said Lot 22, also being a northwest corner and P.C. of said Lot 25;

THENCE, continuing with the southeast line of said Lot 22, and with the northwest line of said Lot 25, along a curve to the left, whose radius is 159.75 feet, whose delta is 85°23'33", an arc length of 238.09 feet, and overall chord which bears N42°47'06"E, a distance 216.66 feet to a 1/2-inch iron rod with

"Vickery" aluminum cap found for a point of tangency (P.T.) hereof, same being a P.T. for said Lots 22 and 25;

THENCE, continuing with the west line of said Lot 22, and the east line of said Lot 25, N00°05'45"E, a distance of 249.80 to a 1/2-inch iron rod with "Vickery" cap found for a northwest corner hereof, same being a northwest corner of said Lot 25, and a northeast corner of said Lot 22, same being a point in the south line of Walzem Road/ Farm to Market (FM) 1976 (R.O.W. Varies);

THENCE, with the south line of said Walzem Road/ FM 1976, and the north line of said Lot 25, N89°47'19"E, a distance of 112.39 feet to a Mag nail with "Brown" shiner found for an angle point hereof, same being an angle point for said Lot 25, also being an angle point for said Walzem Road/ FM 1976, from which a 4" Texas Department of Transportation (TXDOT) brass disk monument found bears, S76°06'59"W, a distance of 1.29 feet;

THENCE, continuing with the south line of said Walzem Road/ FM 1976, and the north line of said Lot 25, S88°27'18"E, a distance of 120.88 feet to a Mag nail with "Doucet" washer set for an angle point hereof;

THENCE, leaving the south line of said Walzem Road/ FM 1976, same being the north line of said Lot 25, passing through said Lot 25 the next four (4) courses and distances:

1) S00°17'20"E, distance of 268.51 feet to a Mag nail with "Doucet" washer set for an angle point hereof;
2) Along a curve to the right, whose radius is 921.48 feet, whose delta is 01°33'47"", whose arc length is 25.14 feet, and whose chord bears N77°14'29"E, a distance of 25.14 feet to a Mag nail with "Doucet" washer set for a point of reverse curvature (P.R.C.) hereof;

3) Along a curve to the left, whose radius is 750.00 feet, whose delta is 09°26'18", whose arc length is 123.55 feet, and whose chord bears N73°18'14"E, a distance of 123.41 feet to a Mag nail with "Doucet" washer set for a point of compound curvature (P.C.C.) hereof;
4) Along a curve to the left, whose radius is 2010.40 feet, whose delta is 03°54'26", whose arc length is 137.10' feet, and whose chord bears N66°37'52"E, a distance of 137.07 feet to a Mag nail with "Doucet" washer set for a point of compound curvature (P.C.C.) hereof;

THENCE, continuing through said Lot 25, and in part through said Lot 44, along a curve to the left, whose radius is 500.00 feet, whose delta is 10°19'44", at an arc length of 14.77 feet passing the common line between said Lots 25 and 44, for an overall arc length of 90.14 feet, and whose overall chord bears N59°30'47"E, a distance of 90.02 feet to a Mag nail with "Doucet" washer set for a P.R.C. hereof, said point lies within said Lot 44;

THENCE, continuing in part through said Lot 44, and through said Lot 38, along a curve to the right, whose radius is 500.00 feet, whose delta is 11°52'41", at an arc length of 3.44 feet passing the common line between said Lots 44 and 38, for an overall arc length of 103.66 feet, and whose overall chord bears N60°17'16"E, a distance of 103.47 feet to a Mag nail with "Doucet" washer set for a P.T. hereof, said point lies in said Lot 38;

THENCE, continuing through said Lot 38, N16°51'51"W, a distance of 69.10 feet to a PK nail with "Brown" shiner found for an angle point hereof, same being a point in the south line of said Walzem Road/ FM 1976, also being the northern most northwest corner of said Lot 38, and the northeast corner of said Lot 44;

THENCE, with the south line of said Walzem Road/ FM 1976, same being the north line of said Lot 38, N89°44'36"E, a distance of 592.04 feet to a 1/2-inch iron rod with "Vickery" aluminum cap found for an angle point hereof, same being an angle point in the south line of said Walzem Road/ FM 1976, and an angle point in the north line of said Lot 38;

THENCE, continuing with the south line of said Walzem Road/ FM 1976, same being the north line of said Lot 38, N88°28'52"E, a distance of 17.99 feet to a "X" cut in concrete for the northern most northeast corner hereof, same being the northern most northeast corner of said Lot 38, also being the northwest corner of Lot 39 of said Replat of Subdivision Plat of Simon Subdivision;

THENCE, leaving the south line of said Walzem Road/ FM 1976, with the common line between said Lots 38 and 39 the following four (4) courses and distances:

1) S00°16'05"E, a distance of 151.24 feet to a 1/2-inch iron rod with "Vickery" aluminum cap found for an angle point hereof, same being the southwest corner of said Lot 39, and an angle point for said Lot 38;
2) N89°45'07"E, a distance of 131.79 feet to a 1/2-inch iron rod found for an angle point hereof, same being a southeast corner of said Lot 39, also being an angle point for said Lot 38;
3) N00°14'38"W, a distance of 18.06 feet to a 1/2-inch iron rod with "Vickery" cap found for an angle point hereof, same being an angle point for said Lots 38 and 39;

4) N89°37'31"E, a distance of 27.57 feet to a PK nail found for the eastern most northeast corner hereof, same being the eastern most southeast corner for said Lot 39, and the eastern most northeast corner of said Lot 38, also being a point in the west line of Lot 2, Block 1 of the Replat and Subdivision Plat Establishing Roosevelt High School Subdivision recorded in Volume 9566, Page 132, (D.P.R.B.C.T.);

THENCE, in part with the east line of Lot 38 and in part with the east line of Lot 37, both of said Replat of Simon Subdivision, and with the west line of Lot 2 of said Roosevelt High School, S00°13'42"E, at a distance of 685.73 feet passing the northeast corner of Lot 37, and being the southeast corner of Lot 38, for a total distance of 1379.71 feet to a PK Nail with "Brown" washer found for an interior ell corner hereof, said point is also an interior ell corner of said Lot 37, and being the southwest corner of said Lot 2;

THENCE, with a north line of said Lot 37, and in part with the south line of said Lot 2, N89°35'15"E, a distance of 63.93 feet to a PK with Shiner found for an exterior ell corner hereof, said point is also an exterior ell corner of said Lot 37;

THENCE, in part with an east line of said Lot 37, and in part with an east line of Lot 44 of said Replat Establishing Simon Apple Garden, S00°31'25"E, a distance of 145.30 feet to a 1/2" iron rod found for a southeast corner hereof, said point is also a southeast corner of said Lot 44 and being the northwest corner of Lot 12, Block 10 of Camelot Subdivision Unit 7, recorded in Volume 6500, Page 144 (D.P.R.B.C.T.), and being a point in the east line of a 40' City Public Service Board Easement as shown on said plat,

THENCE, with the south line of said Lot 44, and the north line of said 40' City Service Board Easement, S89°43'01"W, a distance of 39.73 feet to a 1/2" iron rod found for an interior ell corner hereof, said point is also a point on the west line of said 40' City Public Service Board Easement, and being an interior ell corner of said Lot 44;

THENCE, with the west line of said 40' City Public Service Board Easement, and a west line of said Lot 44, S00°56'32"W, a distance of 15.88 feet to a 1/2" iron rod found for an exterior ell corner hereof, said point is also an exterior ell corner of said Lot 44, and being the northeast corner of Lot 13 of said Camelot Subdivision;

THENCE, in part with the north line of Lots 13-26, Block "D" of said Camelot Subdivision, and in part with the north line of Lot 9, Block "B", of Camelot Subdivision Unit 5A, recorded in Volume 6500, Page 16 (D.P.R.B.C.T.), and in part with the north line of Lot 49 of Windsor Square Wal-Mart III recorded in Volume 9560, Page 80 (D.P.R.B.C.T.), and in part with the north line of Lot 36 of said Toys "R" Us, S89°31'43"W, a distance of 2200.44 feet to the POINT OF BEGINNING and containing 66.9915 Acre (2,918,150 sq. ft.) of land, more or less.

Exhibit B
Northwest Outparcel

That certain property comprising all of Lot 23, of the Walzem Road Subdivision, being more particularly described on the map or plat thereof recorded in Volume 7100, Page 12 of the Deed and Plat Records of Bexar County, Texas.

TOGETHER WITH:

That certain property comprising all of Lot 30, N.C.B. 12190, Simon Subdivision, being more particularly described on the map or plat thereof recorded in Volume 7800, Page 187 of the Deed and Plat Records of Bexar County, Texas.

Exhibit C
South Parcel

That certain property comprising all of Lot 36, of the Replat of Toys R' Us Subdivision, being more particularly described on the map or plat thereof recorded in Volume 9520, Page 187 of the Deed and Plat Records of Bexar County, Texas.

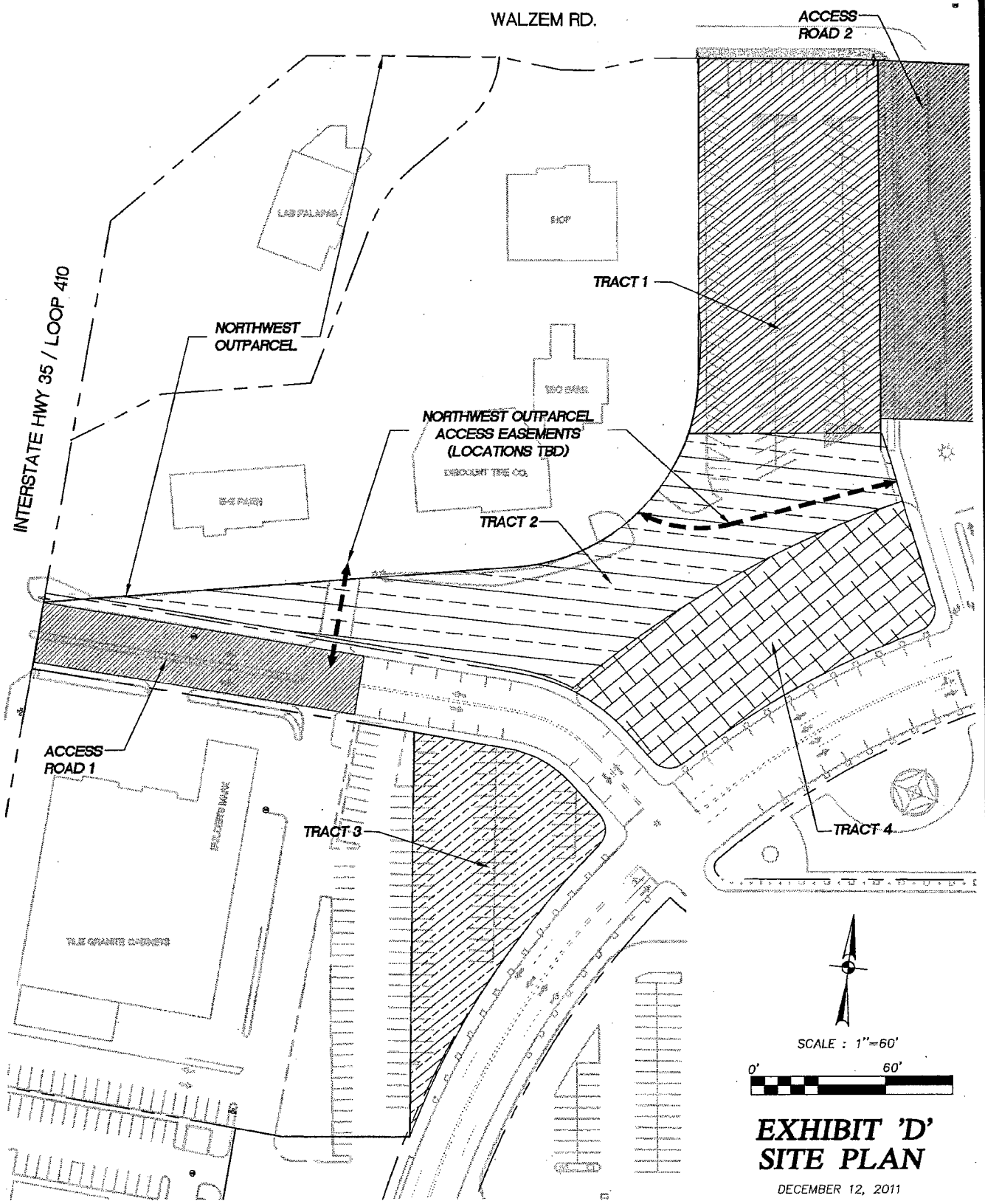


EXHIBIT 'D' SITE PLAN

DECEMBER 12, 2011

PAPE-DAWSON ENGINEERS

555 EAST RAMSEY | SAN ANTONIO, TEXAS 78216 | PHONE: 210.375.9000 FAX: 210.375.9010

TEXAS BOARD OF PROFESSIONAL ENGINEERS, FIRM REGISTRATION # 470

Date: May 11, 2012, 3:47pm User ID: Gkoonius
File: P:\69\84\30\Design\Exhibits\120417-EXHIBIT D-P-1.dwg

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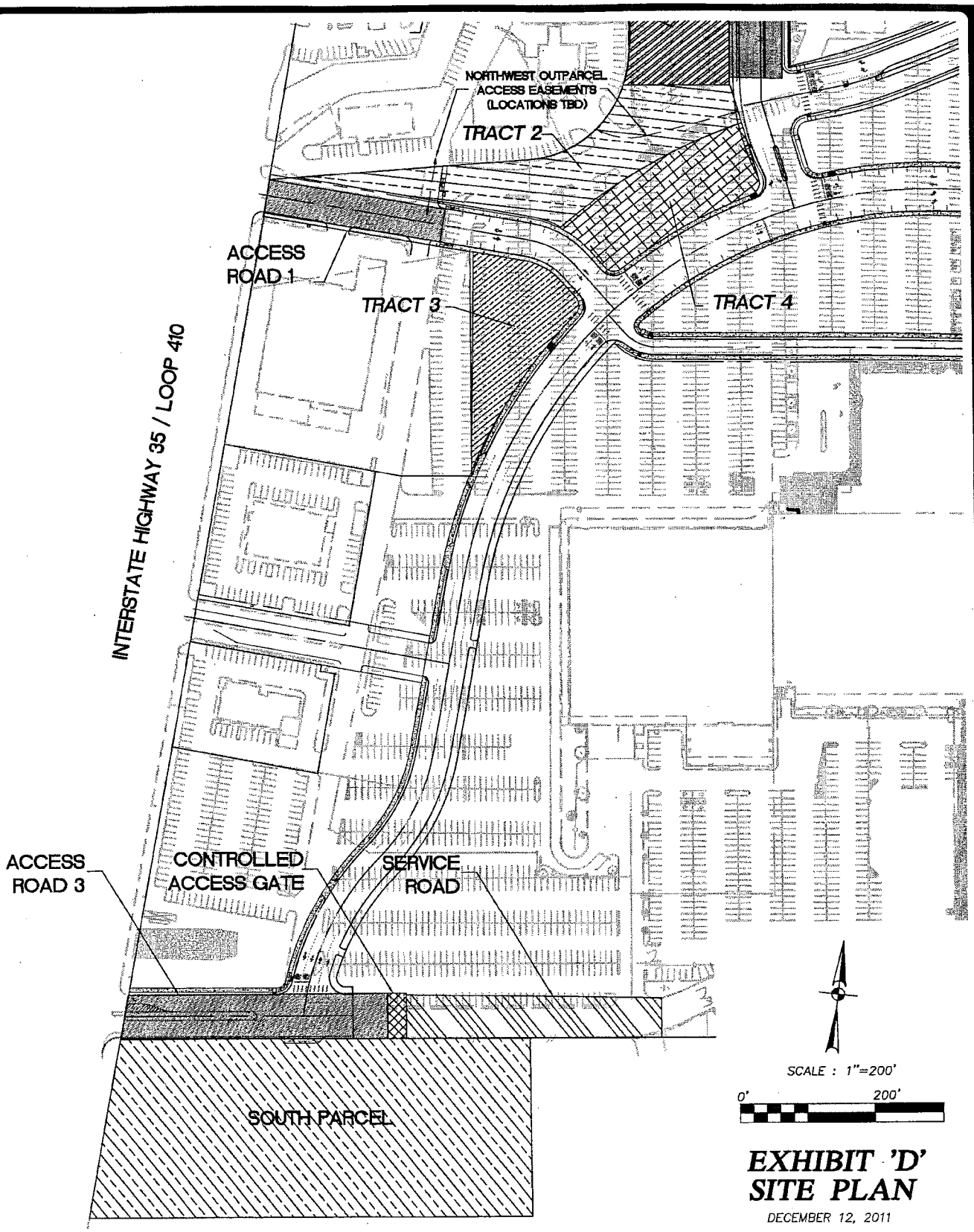

EXHIBIT 'D'
SITE PLAN

DECEMBER 12, 2011

PAPE-DAWSON ENGINEERS

555 EAST RAMSEY | SAN ANTONIO, TEXAS 78216 | PHONE: 210.375.9000 FAX: 210.375.9010

TEXAS BOARD OF PROFESSIONAL ENGINEERS, FIRM REGISTRATION # 470

Date: May 11, 2012, 3:50pm User ID: GAgenius
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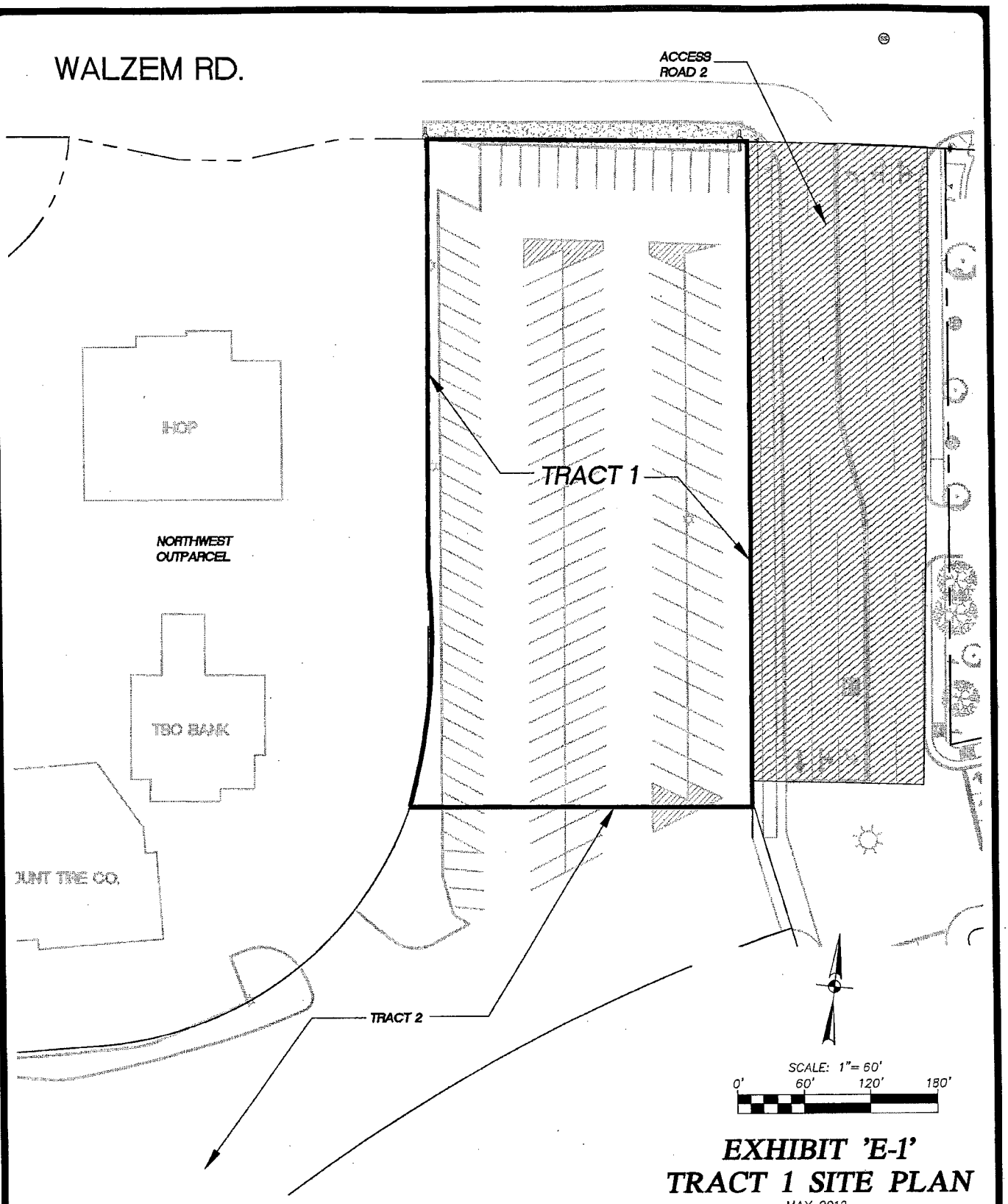

EXHIBIT 'E-1'
TRACT 1 SITE PLAN

MAY 2012

PAPE-DAWSON ENGINEERS

555 EAST RAMSEY | SAN ANTONIO, TEXAS 78216 | PHONE: 210.375.9000 FAX: 210.375.9010

TEXAS BOARD OF PROFESSIONAL ENGINEERS, FIRM REGISTRATION # 470

Date: May 11, 2012 4:01pm User ID: GMoenius
File: P:\69\84\01\Design\Exhibits\120511-NEIMAN SITE PLAN EXHIBIT E-1.dwg

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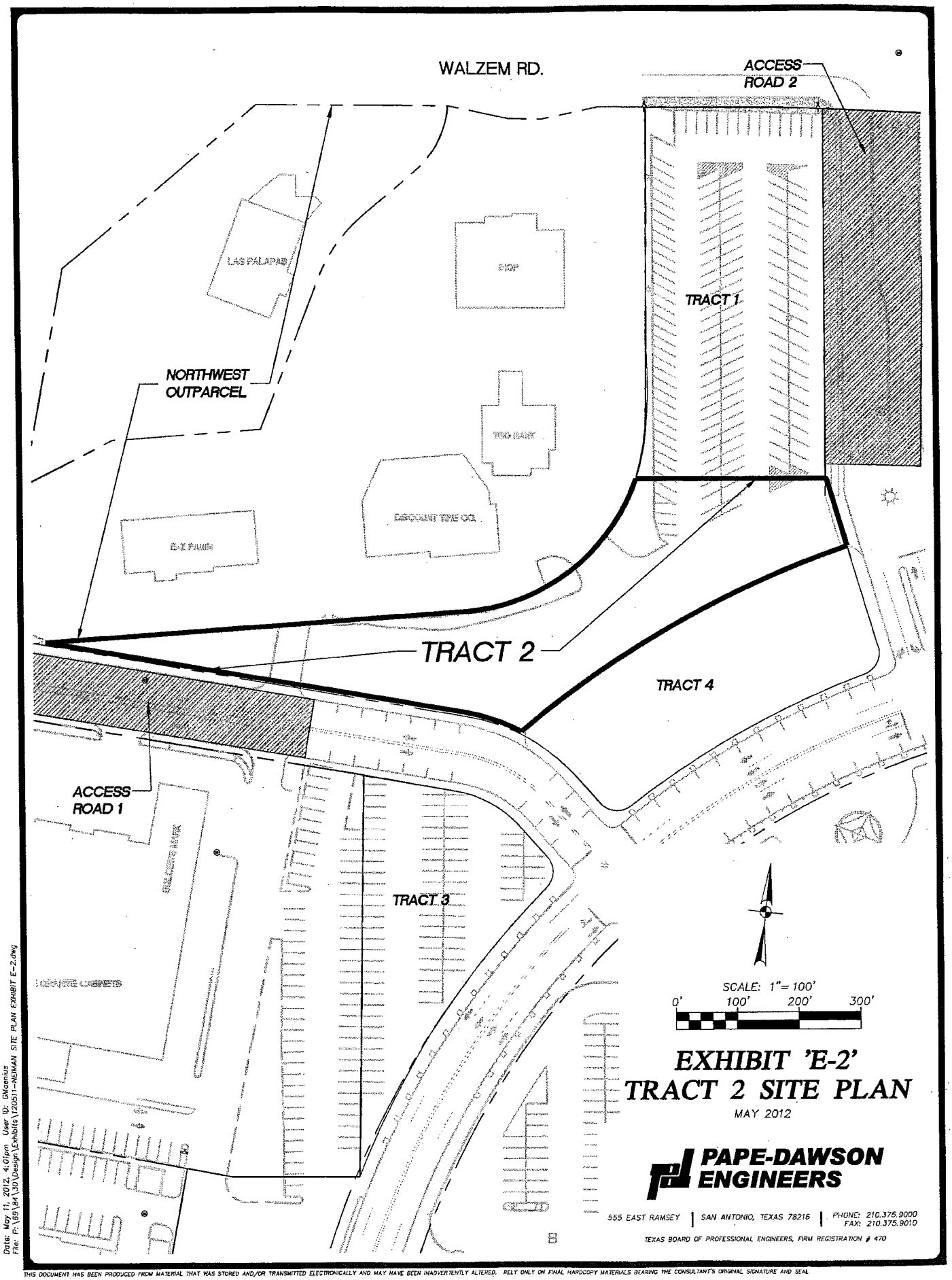

EXHIBIT 'E-2'
TRACT 2 SITE PLAN

MAY 2012

PAPE-DAWSON ENGINEERS

555 EAST RAMSEY | SAN ANTONIO, TEXAS 78216 | PHONE: 210.375.9000 FAX: 210.375.9010

TEXAS BOARD OF PROFESSIONAL ENGINEERS, FIRM REGISTRATION # 470

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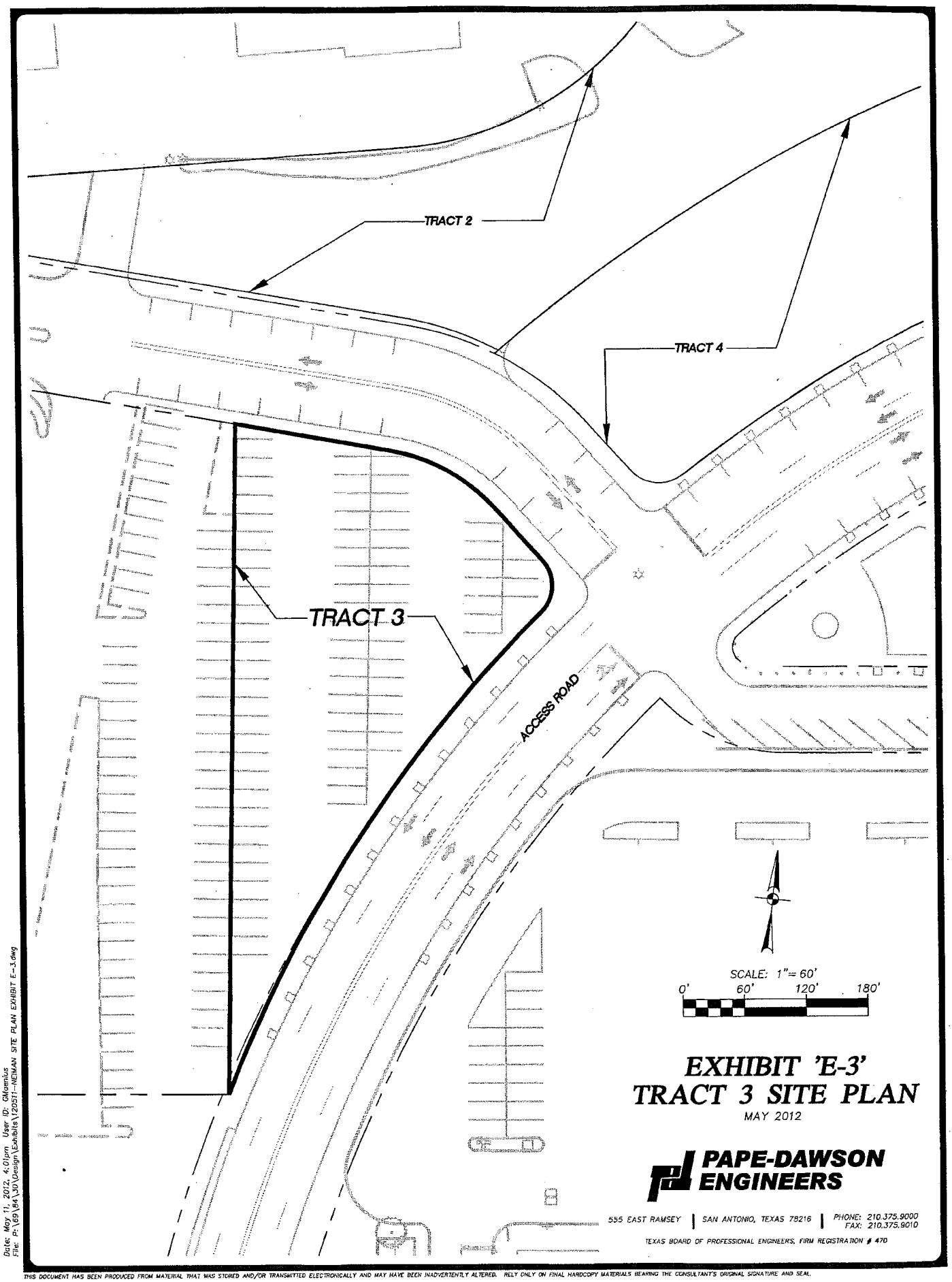

EXHIBIT 'E-3'
TRACT 3 SITE PLAN

MAY 2012

PAPE-DAWSON ENGINEERS

555 EAST RAMSEY | SAN ANTONIO, TEXAS 78216 | PHONE: 210.375.9000 FAX: 210.375.9010

TEXAS BOARD OF PROFESSIONAL ENGINEERS, FIRM REGISTRATION # 470

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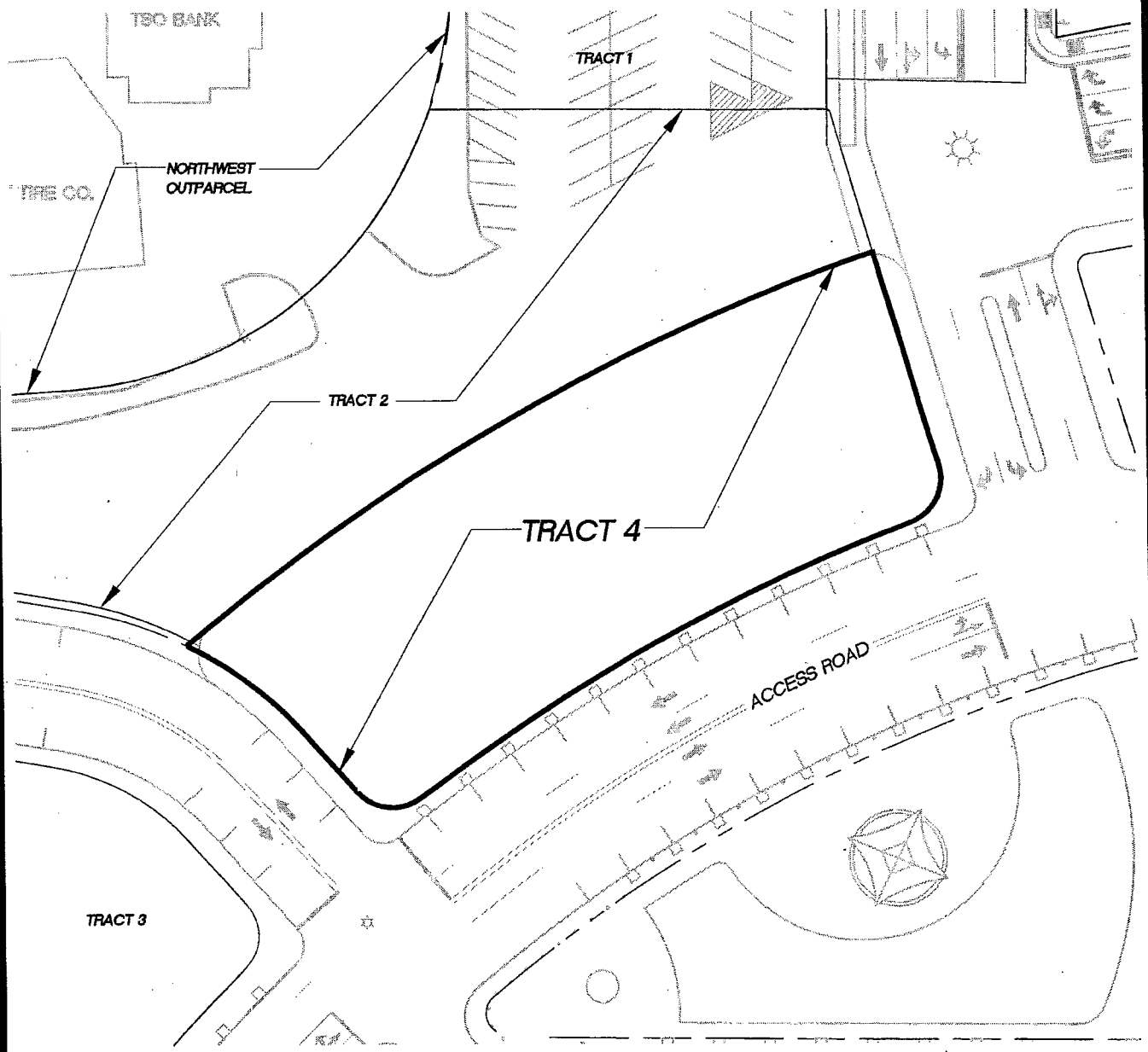

SCALE: 1"= 60'

0' 60' 120' 180'

EXHIBIT 'E-4'
TRACT 4 SITE PLAN

MAY 2012

PAPE-DAWSON ENGINEERS

555 EAST RAMSEY | SAN ANTONIO, TEXAS 78216 | PHONE: 210.375.9000 FAX: 210.375.9010

TEXAS BOARD OF PROFESSIONAL ENGINEERS, FIRM REGISTRATION # 470

Date: May 11, 2012, 4:01pm User ID: GMoenius
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Date: Apr 17, 2012, 2:34pm User ID: GMoenius
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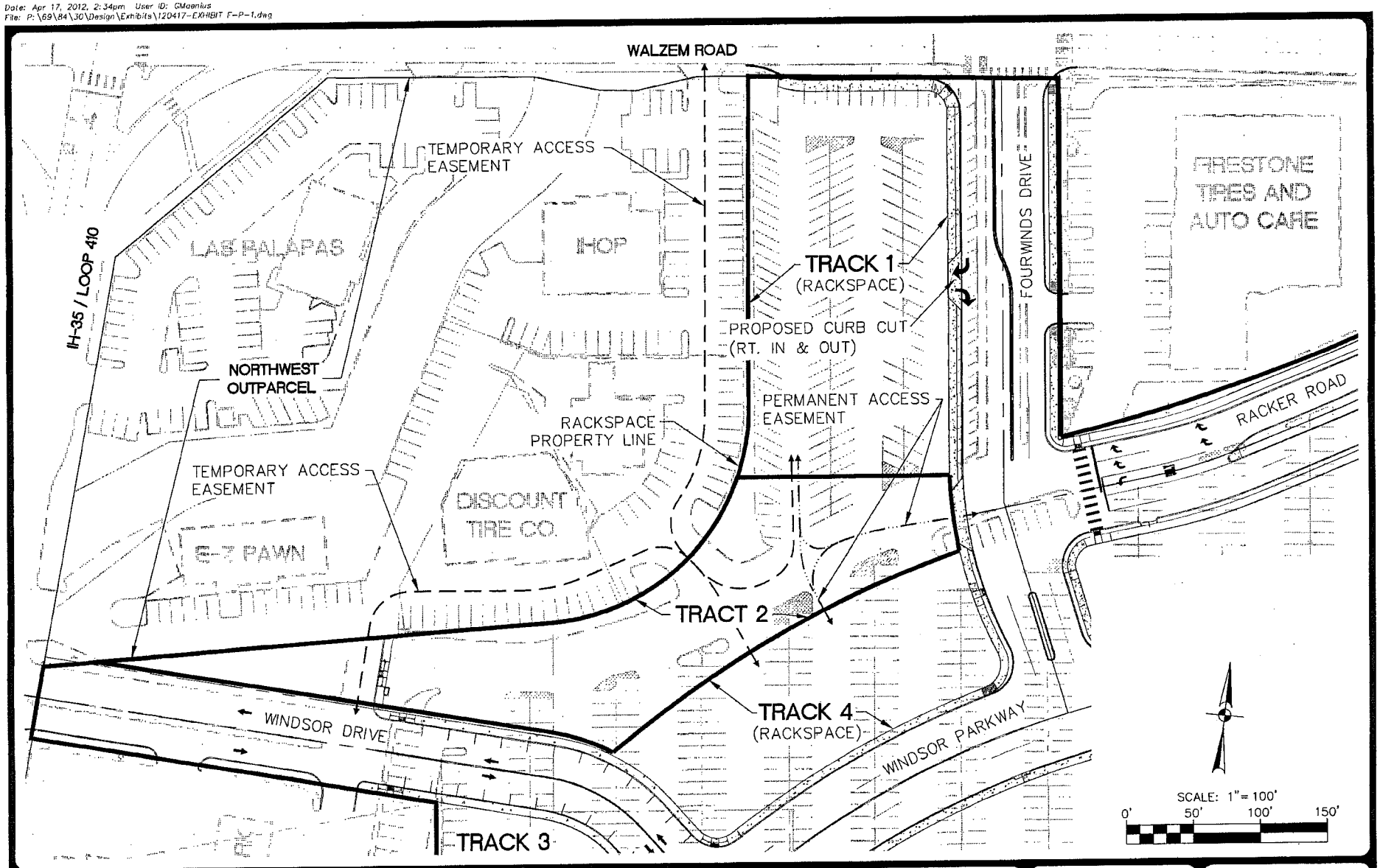

JOB NO. 6984-30
DATE JANUARY 2012
DESIGNER -
CHECKED - DRAWN TGD
SHEET 1 OF 2

EXHIBIT "F"
DETAILED SITE PLAN

PAPE-DAWSON ENGINEERS
555 EAST RAMSEY | SAN ANTONIO, TEXAS 78216 | PHONE: 210.375.9000 FAX: 210.375.9010
TEXAS BOARD OF PROFESSIONAL ENGINEERS, FIRM REGISTRATION # 470

REVISIONS:

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Date: Apr 17, 2012, 11:19am User ID: GMaenius
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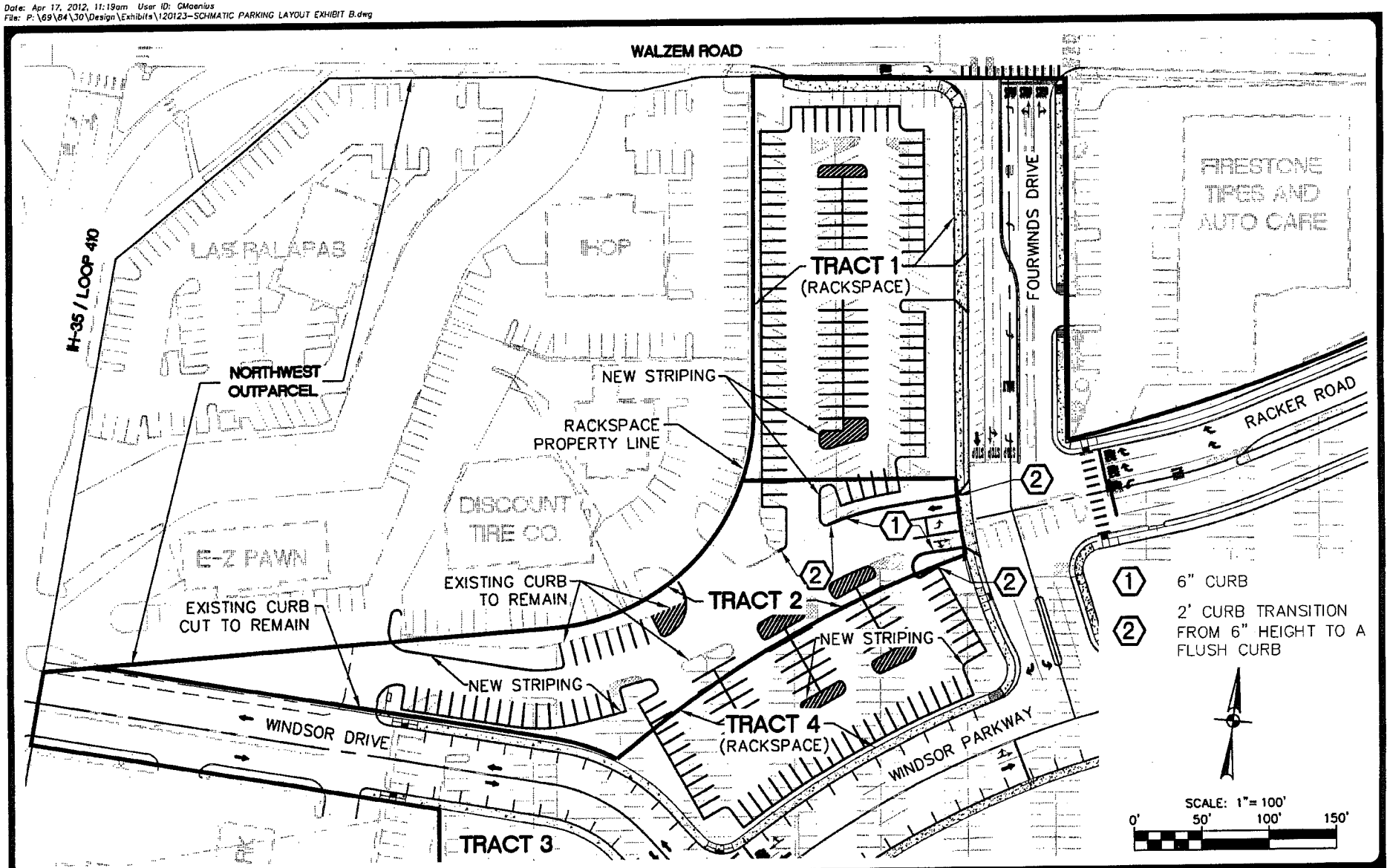

JOB NO. 6984-30
DATE JANUARY 2012
DESIGNER -
CHECKED - DRAWN TGD
SHEET 2 OF 2

EXHIBIT "F"
DETAILED SITE PLAN

PAPE-DAWSON ENGINEERS
555 EAST RAMSEY | SAN ANTONIO, TEXAS 78216 | PHONE: 210.375.9000 FAX: 210.375.9010
TEXAS BOARD OF PROFESSIONAL ENGINEERS, FIRM REGISTRATION # 470

REVISIONS:

THIS DOCUMENT HAS BEEN PRODUCED FROM MATERIAL THAT WAS STORED AND/OR TRANSMITTED ELECTRONICALLY AND MAY HAVE BEEN INADVERTENTLY ALTERED. RELY ONLY ON FINAL HARDCOPY MATERIALS BEARING THE CONSULTANT'S ORIGINAL SIGNATURE AND SEAL.

OPTION AGREEMENT

This Option Agreement (this "Agreement") is executed effective as of _____, 2012 (the "Effective Date"), by and among WINDCREST ECONOMIC DEVELOPMENT CORPORATION ("Owner"), and JAMES C. NIEMANN, TRUSTEE FOR THE NFP PARTNERSHIP, a Texas limited partnership ("NFP"); and is hereby consented to by RACKSPACE US, INC., a Delaware corporation ("Rackspace").

WHEREAS, Owner is the fee owner of a parcel of real property located in the City of San Antonio, Bexar County, Texas, which is depicted on the site plan attached hereto as Exhibit "A" attached hereto and made a part hereof for all purposes (the "Property"). The Property is to be more fully described by metes and bounds that shall be substituted into Exhibit "A" in accordance with and as set forth in that certain Agreement Regarding Reciprocal Easements, Restrictions, Covenants and Conditions and Memorandum of Purchase Option of even date herewith, by and between Owner, NFP and Rackspace;

WHEREAS, NFP owns that certain property located adjacent to the Property, which is more fully described in Exhibit "B" attached hereto and made a part hereof for all purposes (the "NFP Parcel")

WHEREAS, NFP desires to obtain from Owner an exclusive option to purchase the Property (the "Option") and Owner wishes to grant such option;

WHEREAS, the Property comprises a portion of the premises ground leased by Rackspace from the Owner (the "Rackspace Leased Premises"), pursuant to that certain lease dated August 2, 2007, by and between Owner, as landlord, and Rackspace, as Tenant (the "Rackspace Lease"); and

WHEREAS, Rackspace has consented to the option granted herein, subject to terms, provisions and conditions hereof.

NOW, THEREFORE, in consideration of the premises and agreements herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by and among Owner, NFP and Rackspace as follows:

1. Exercise of Option. The parties acknowledge that the Property is currently benefitted by a tax-exempt status. On the earlier to occur of (i) no more than ninety (90) days following the date upon which Owner receives written notice from NFP stating that NFP desires to exercise the Option (which notice by NFP may be given at any time during the term of this Agreement), (ii) no more than ninety (90) days following the date upon which Owner receives written notice from the Bexar County Appraisal District or other applicable governmental entity that the Property has lost its tax-exempt status or (ii) twelve (12) years following the Effective Date of this Agreement (in any of such events, the "Option Exercise Date"), Owner shall deliver a written notice to NFP either (a) acknowledging NFP's exercise of the option pursuant to clause (i) above, (b) informing NFP that the Property has lost its tax exemption pursuant to clause (ii) above, or (c)

informing NFP of the lapse of twelve (12) years from the Effective Date of this Agreement (in any of such events, the "Owner's Notice"), which Owner's Notice shall be accompanied by a fully executed and notarized Special Warranty Deed, in the form attached hereto as Exhibit "C" and made a part hereof for all purposes, conveying the Property from Owner to NFP. Upon receipt of the Special Warranty Deed, NFP may record the same in the Real Property Records of Bexar County, Texas.

Notwithstanding anything contained herein, at the time of such conveyance, the form of the Special Warranty Deed attached may be modified as necessary to (i) comply with the requirements of the Texas Property Code or any other applicable law, and (ii) correctly reference the names, addresses, signatories, and otherwise complete any bracketed language contained therein or complete any blanks therein.

As consideration for the foregoing rights and as the purchase price for the Property, NFP has paid to Owner, as of the Effective Date of this Agreement, the sum of One Hundred and No/100 Dollars ($100.00), and NFP has provided other good and valuable consideration therefor, including without limitation, the execution by NFP of that certain Termination and Release Agreement, dated of even date herewith, which terminates and releases in its entirety the easement rights previously granted in that certain Agreement dated August 25, 1972, recorded in Volume 6935, Page 332, in the Deed Records of Bexar County Texas, as amended by that certain Agreement dated January 24, 1977, recorded in Volume 8009, Page 221, in the Deed Records of Bexar County Texas, and that certain Satisfaction and Release dated September 15, 1977, recorded in Volume 8273, Page 575, in the Deed Records of Bexar County Texas.

All revenues and expenses with respect to the Property and which are applicable to the time period before and after the conveyance of the Property to NFP, determined in accordance with sound accounting principles consistently applied, shall be prorated between Owner and NFP.

2. Subordination to Rackspace Lease. Notwithstanding anything in this Agreement to the contrary, NFP expressly acknowledges and agree that (i) Rackspace has an option to purchase the Rackspace Leased Premises under the Rackspace Lease, which includes, without limitation, the Property (the "Rackspace Option"); (ii) any and all rights of NFP to the Property, including, without limitation, the Option contained herein, are subordinate to and inferior to any and all rights of Rackspace under the Rackspace Lease, including, without limitation, the Rackspace Option; (iii) in the event that Rackspace exercises the Rackspace Option prior to the Option Exercise Date hereunder and acquires the Property from Owner, then Rackspace shall become the Owner of the Property and all references herein to "Owner" shall be deemed to refer to Rackspace; and (iv) in the event Rackspace has not exercised the Rackspace Option before the Option Exercise Date, then concurrent with the deliver of the Special Warranty Deed under this Agreement, Rackspace shall release the Property from the Rackspace Leased Premises under the Rackspace Lease.

3. No Effect on Tax-Exemption. The Rackspace Leased Premises (of which the Property is a portion) is benefitted by a tax-exempt status pursuant to the Rackspace

Lease and that certain Master Economic Incentives Agreement dated August 2, 2007 (the "MEIA"), which tax-exemption was granted to Rackspace for the purpose of (i) inducing Rackspace to relocate its corporate headquarters to the Rackspace Leased Premises and (ii) facilitating certain Business Activities (as defined in the MEIA) on the Rackspace Leased Premises. Notwithstanding anything in this Agreement to the contrary, the parties expressly acknowledges and agree that (i) the grant of the Option contained herein was in furtherance of the foregoing goals because the Option was granted in order to facilitate the relocation of the former Windsor Park Mall ring road which in turn was necessary in order to facilitate the foregoing goals, (ii) this Agreement facilitates the redevelopment of the Rackspace Leased Premises as contemplated in the MEIA and the Rackspace Lease and therefore, entering into this Agreement is within the valid purposes of the Rackspace Lease, the MEIA and the tax-exemption granted therein, (iii) nothing contained in this Agreement, including without limitation, the grant of the Option contained herein, is intended to, nor shall the same be deemed to, (a) cause any portion of the Rackspace Leased Premises to lose its tax-exempt status or (b) be a failure to conduct Business Activities or a cessation of Business Activities on the Rackspace Leased Premises under the MEIA, and (iv) if anything contained in this Agreement, including without limitation, the grant of the Option contained herein, is in fact ever deemed by any third party to, (a) cause any portion of the Rackspace Leased Premises (other than the Property) to lose its tax-exempt status or (b) be a failure to conduct Business Activities or a cessation of Business Activities on the Rackspace Leased Premises under the MEIA, then Owner shall have the right to notify NFP of the same, whereupon (x) this Option shall be deemed automatically exercised and the "Option Exercise Date" shall be deemed to be the date upon which Owner delivers such notice to NFP and (y) the Option Property shall be assessed as a separately-assessed tax parcel from the balance of the Rackspace Parcel such that the balance of the Rackspace Parcel may maintain its tax-exempt status.

4. Assignment. NFP shall not assign its interest in this Agreement or any of its rights hereunder to any other person or entity at any time without Owner's consent. Any sale by Owner of the Property during the term of this Agreement shall be subject to this Agreement, and the purchaser of the Property shall assume all of the obligations of Owner hereunder from and after the date of such sale.

5. Commissions. Owner shall indemnify and hold harmless NFP from and against any and all liabilities arising from any claims relating to real estate commissions, which claims are caused or incurred by Owner. NFP shall indemnify and hold harmless Owner from and against any and all liabilities arising from any claims relating to real estate commissions, which claims are caused or incurred by NFP.

6. Condemnation. In the event that, prior to the conveyance of the Property to NFP, any portion of the Property which, in NFP's sole opinion, is not material to the use of the remainder, shall be condemned or taken by eminent domain by any authority, then in such case, this Agreement shall not terminate, but shall remain in full force and effect as to the remainder of the Property. In the event of a taking by condemnation or similar proceedings or actions of all of the Property, or any portion of the Property which, in NFP's sole opinion, is material to the use of the remainder, NFP shall have the option to terminate this Agreement upon written notice to Owner, in which event neither NFP

nor Owner shall have any further right or obligation hereunder except as expressly set forth herein.

7. Risk of Loss. Owner shall bear all risk of loss to the Property until such time as Owner has delivered the Special Warranty Deed to NFP and title to the Property has passed to NFP.

8. Remedies on Default. In the event of a default hereunder on the part of Owner, NFP may exercise any one or more of the following as its sole and exclusive remedies: (i) terminate this Agreement or (ii) enforce the remedy of specific performance against Owner. In the event of a default hereunder on the part of NFP, Owner shall have the right to exercise one or more of the following as its sole and exclusive remedies: (i) terminate this Agreement or (ii) enforce the remedy of specific performance against NFP.

9. Notices. All notices, demands, statements, and requests (collectively the "Notice") required or permitted to be given under this Agreement must be in writing and shall be deemed to have been properly given or served as of the date hereinafter specified: (i) on the date of personal service upon the party to whom the notice is addressed or if such party is not available the date such notice is left at the address of the party to whom it is directed, (ii) on the date the notice is postmarked by the United States Post Office, provided it is sent prepaid, registered or certified mail, return receipt request, and (iii) on the date the notice is delivered by a courier services (including Federal Express, Express Mail, Lone Star or similar operation) to the address of the Party to whom it is directed, provided it is sent prepaid, return receipt requested. The address of the signatories to this Agreement is set forth below:

If to Rackspace:	Rackspace Hosting Attn: General Counsel 5000 Walzem San Antonio, Texas 78218 Telephone No.: 210-312-4700 Fax No.: 210-312-4848
With a copy to:	Steve Golden Golden Steves Cohen & Gordon LLP 300 Convent Street, Suite 2600 San Antonio, Texas 78205 Telephone No.: (210) 745 3700 Fax No.: (210) 745 3737
If to NFP:	James C. Niemann, Trustee 1122 Colorado Street, Suite 313 Austin, Texas 78701 Attn: Fred Niemann, Jr. Telephone No.: (512) 474 6901 Email: fred.Niemann@gmail.com

If to Windcrest: Ray Watson
Director of Economic Development
8601 Midcrown
Windcrest, Texas 78239
Telephone No.: _____
Fax No.: 210-655-8776

10. Governing Law/Interpretation. The terms and conditions of this Agreement shall be construed, interpreted, and enforced in accordance with the laws of the State of Texas. Where required for proper interpretation, words in the singular shall include the plural; the masculine gender shall include the neuter and the feminine, and vice versa.

11. Memorandum of Exercise of Option. Concurrent with the delivery of the Special Warranty Deed to NFP and conveyance of the Property to NFP, Owner shall have the right to record in the real property records of Bexar County, Texas a memorandum confirming the exercise of the Option hereunder and termination of this Agreement.

12. Attorneys' Fees. In the event that it becomes necessary for either party hereto to file suit to enforce this Agreement or any provisions contained herein, the party prevailing in such action shall be entitled to recover, in addition to all other remedies or damages, its reasonable attorneys' fees incurred in such suit.

13. Headings. The descriptive headings contained in this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

14. Entire Agreement. This Agreement, including any and all exhibits hereto, constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the parties in connection therewith. No representation, warranty, covenant, agreement, or condition not expressed in this Agreement shall be binding upon the parties hereto or shall affect or be effective to interpret, change, or restrict the provisions of this Agreement.

15. Construction. The parties agree that this Agreement is the result of negotiations between the parties, and that any rule of construction that a document is to be construed against the party that drafted it shall not apply to this Agreement.

16. Survival. The parties agree that any provision contained in this Agreement which by its nature imposes any obligation or duty upon any party hereto, or gives any right or benefit to any party hereof, continuing beyond the conveyance of the Property to NFP, shall not be canceled and considered merged into the Special Warranty Deed, but shall instead survive the conveyance of the Property to NFP and continue in full force and effect, subject, however, to any statutory limitations periods.

17. Time Period Calculation. Should the calculation of any of the various time periods provided for herein result in either an obligation becoming due on a Saturday, Sunday, or legal holiday or a date otherwise of particular significance occurring on a Saturday, Sunday, or legal holiday, then the due date of such obligation or scheduled time of occurrence of such event shall be delayed until the next business day.

18. Amendment. This Agreement may not be modified or amended except by an Agreement in writing signed by Owner, NFP and Rackspace.

19. Successors and Assigns. This Agreement and the provisions hereof shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors, and permitted assigns.

20. Time of the Essence. Time is of the essence of this Agreement.

21. Multiple Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement shall be binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected herein as signatories.

IN WITNESS WHEREOF, the parties have caused this Option Agreement to be executed by their duly authorized representative with their respective signatures below, effective as of the above-written date.

OWNER:

WINDCREST ECONOMIC DEVELOPMENT CORPORATION

By: _____
Name: _____
Title: _____

NFP:

James C. Niemann, Trustee for The NFP Partnership,
a Texas limited partnership

By: _____
Name: James C. Niemann
Title: Trustee

RACKSPACE:

RACKSPACE US, INC.
a Delaware corporation

By: _____
Name: _____
Title: _____

Exhibit A
Site Plan of the Property

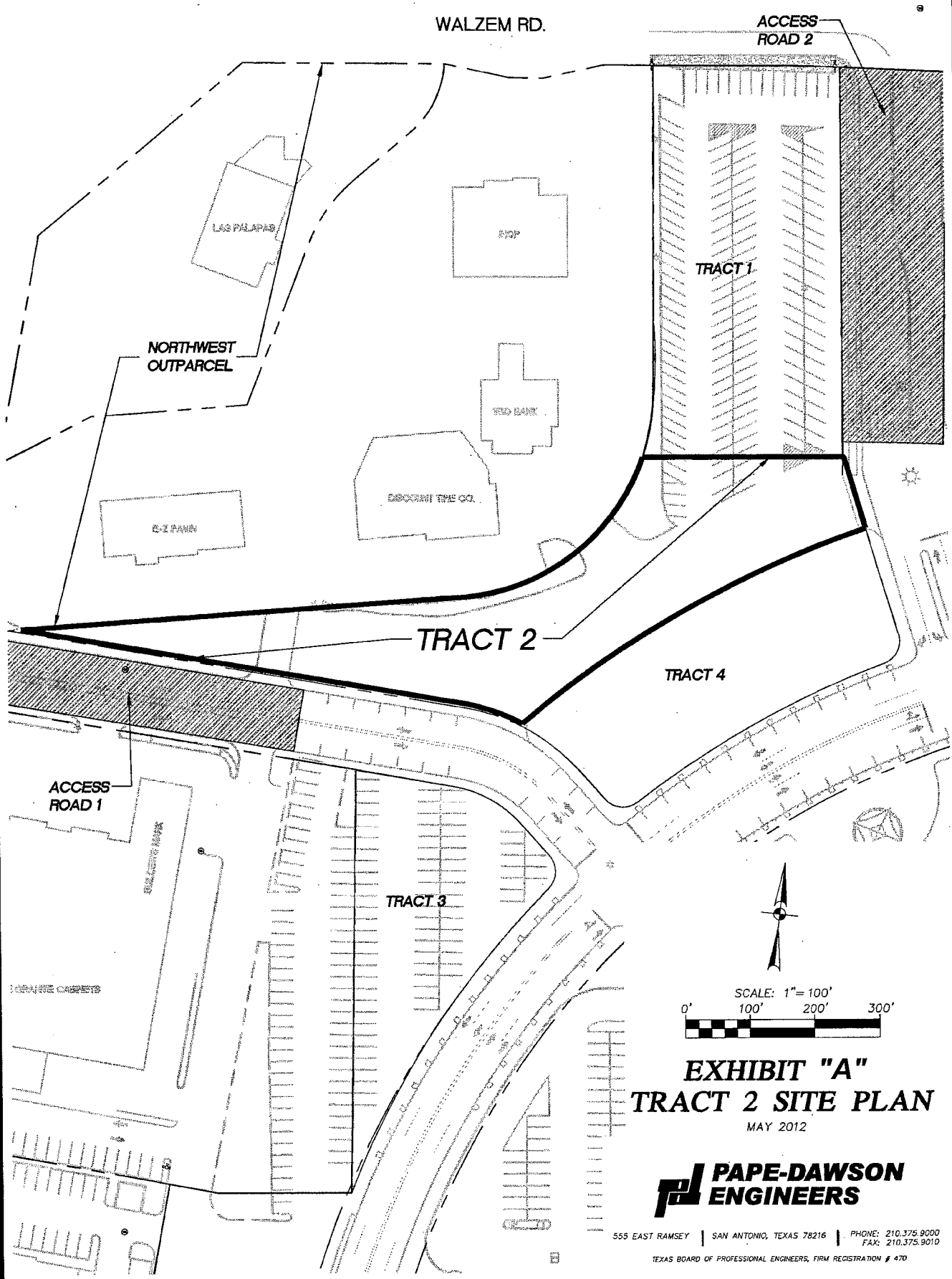

EXHIBIT "A"
TRACT 2 SITE PLAN

MAY 2012

PAPE-DAWSON ENGINEERS

555 EAST RAMSEY | SAN ANTONIO, TEXAS 78216 | PHONE: 210.375.9000 FAX: 210.375.9010

TEXAS BOARD OF PROFESSIONAL ENGINEERS, FIRM REGISTRATION # 470

Date: May 11, 2012, 4:01pm User ID: GMgenius
File: P:\169\84\30\Design\Exhibits\120511-NEIMAN SITE PLAN EXHIBIT E-2.dwg

THIS DOCUMENT HAS BEEN PRODUCED FROM MATERIAL THAT WAS STORED AND/OR TRANSMITTED ELECTRONICALLY AND MAY HAVE BEEN INADVERTENTLY ALTERED. RELY ONLY ON FINAL HARDCOPY MATERIALS BEARING THE CONSULTANT'S ORIGINAL SIGNATURE AND SEAL.

Exhibit B
Legal Description of the NFP Parcel

That certain property comprising all of Lot 23, of the Walzem Road Subdivision, being more particularly described on the map or plat thereof recorded in Volume 7100, Page 12 of the Deed and Plat Records of Bexar County, Texas.

TOGETHER WITH:

That certain property comprising all of Lot 30, N.C.B. 12190, Simon Subdivision, being more particularly described on the map or plat thereof recorded in Volume 7800, Page 187 of the Deed and Plat Records of Bexar County, Texas.

Exhibit C

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF ALL OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

SPECIAL WARRANTY DEED

THE STATE OF TEXAS	**§**	
	§	**KNOW ALL MEN BY THESE PRESENTS:**
COUNTY OF BEXAR	**§**	

THAT THE UNDERSIGNED, *[WINDCREST ECONOMIC DEVELOPMENT CORPORATION or RACKSPACE US, INC., a Delaware corporation, as applicable]* ("Grantor"), for and in consideration of the sum of TEN DOLLARS ($10.00) cash, and other good and valuable consideration paid to Grantor by *[JAMES C. NIEMANN, TRUSTEE FOR THE NFP PARTNERSHIP, a Texas limited partnership or its successors]* ("Grantee"), with an address of *[1122 Colorado Street, Suite 313, Austin, Texas 78701 or the then-current address]*, the receipt and sufficiency of which are hereby fully acknowledged and confessed, has GRANTED, SOLD and CONVEYED, and by these presents does hereby GRANT, SELL and CONVEY unto Grantee, all of that certain real property in Bexar County, Texas being more particularly described in **Exhibit "A"** attached hereto and made part hereof for all purposes (the "Property").

This conveyance is made and accepted subject to all restrictions, easements, encumbrances and any other matters of record in Bexar County, Texas, that affect the Property as of the date of this deed.

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereto in anywise belonging unto the said Grantee, its successors and assigns forever; and Grantor does hereby bind Grantor and Grantor's successors to WARRANT AND FOREVER DEFEND all and singular the Property unto the said Grantee, and Grantee's successors and assigns, against every person whomsoever claiming or to claim the same or any part thereof, by, through or under Grantor, but not otherwise.

GRANTEE WARRANTS AND ACKNOWLEDGES TO AND AGREES WITH GRANTOR THAT GRANTEE IS PURCHASING THE PROPERTY IN ITS "AS-IS, WHERE IS" CONDITION "WITH ALL FAULTS" AS OF THE DATE OF THIS DEED AND SPECIFICALLY AND EXPRESSLY WITHOUT ANY WARRANTIES, REPRESENTATIONS OR GUARANTEES, WHETHER EXPRESS OR IMPLIED, AS TO ITS CONDITION, FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY, OR ANY OTHER WARRANTY OF ANY KIND, NATURE,

OR TYPE WHATSOEVER FROM OR ON BEHALF OF GRANTOR. GRANTOR SPECIFICALLY DISCLAIMS ANY WARRANTY, GUARANTY OR REPRESENTATION, ORAL OR WRITTEN, PAST OR PRESENT, EXPRESS OR IMPLIED, CONCERNING (A) THE VALUE, NATURE, QUALITY OR CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, STRUCTURAL INTEGRITY, SOIL AND GEOLOGY; (B) THE INCOME TO BE DERIVED FROM THE PROPERTY; (C) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH GRANTEE MAY CONDUCT THEREON, INCLUDING THE POSSIBILITIES FOR FUTURE DEVELOPMENT OF THE PROPERTY; (D) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY; (E) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY; (F) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE PROPERTY; (G) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY: (H) THE PRESENCE OF ABSENCE OF HAZARDOUS MATERIALS AT, UNDER, OR ADJACENT TO THE PROPERTY OR ANY OTHER ENVIRONMENTAL MATTER OR CONDITION OF THE PROPERTY; OR (I) ANY OTHER MATTER WITH RESPECT TO THE PROPERTY. GRANTEE ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED BY OR ON BEHALF OF GRANTOR WITH RESPECT TO THE PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT GRANTOR HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. GRANTOR IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY ORAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY, OR THE OPERATION THEREOF, FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE, SERVANT OR OTHER PERSON. GRANTEE FURTHER ACKNOWLEDGES AND AGREES THAT GRANTEE IS A SOPHISTICATED AND EXPERIENCED GRANTEE OF PROPERTIES SUCH AS THE PROPERTY AND HAS BEEN DULY REPRESENTED BY COUNSEL IN CONNECTION WITH THE ACQUISITION OF THIS PROPERTY.

No use or operation will be made, conducted or permitted on or with respect to all or any part of the Property, which is obnoxious to or out of harmony with the development or operation of that certain property containing approximately *[66.99]* acres being more particularly described in Exhibit B attached hereto and made a part hereof for all purposes (the "Grantor's Adjacent Land"), including, but not limited to, any of the following uses: any nuisance; any use which violates the requirement of any applicable law of any applicable governmental authority; the primary use of any building as a warehouse; an assembly hall; distillation operation; a telecommunications tower; mobile home or trailer park; the drilling for and/or removal of subsurface substances; kennel where animals are kept overnight; game room or amusement park; skating rink; pool hall or billiard parlor; bowling alley; dancehall; saloon, cocktail lounge, nightclub or bar;

mortuary or funeral home; automobile body and repair shop; flea market; or adult book store or store selling sexually explicit material. The foregoing use restrictions shall run with the land restricted hereby and shall inure to the benefit of Grantor, its successors and assigns in Grantor's Adjacent Land.

[Signature Page Follows]

EXECUTED to be effective the _____ day of _____, 20____.

GRANTOR:

[WINDCREST ECONOMIC DEVELOPMENT CORPORATION

By: _____
Name: _____
Title: _____

THE STATE OF TEXAS §
§
COUNTY OF BEXAR §

The foregoing instrument was acknowledged before me on this ____ day of _____, 20____, by _____, the _____ of Windcrest Economic Development Corporation, on behalf of said corporation.

_____
NOTARY PUBLIC, in and for
THE STATE OF TEXAS

OR

RACKSPACE US, INC.
a Delaware corporation

By: _____
Name: _____
Title: _____

THE STATE OF TEXAS §
§
COUNTY OF BEXAR §

The foregoing instrument was acknowledged before me on this ____ day of _____, 20____, by _____, the _____ of Windcrest Economic Development Corporation, on behalf of said corporation.

_____
NOTARY PUBLIC, in and for
THE STATE OF TEXAS

AFTER RECORDING, PLEASE RETURN TO:

_____

_____

_____

_____

Exhibit A to Deed
Legal Description of the Property

[Insert legal description of the Property]

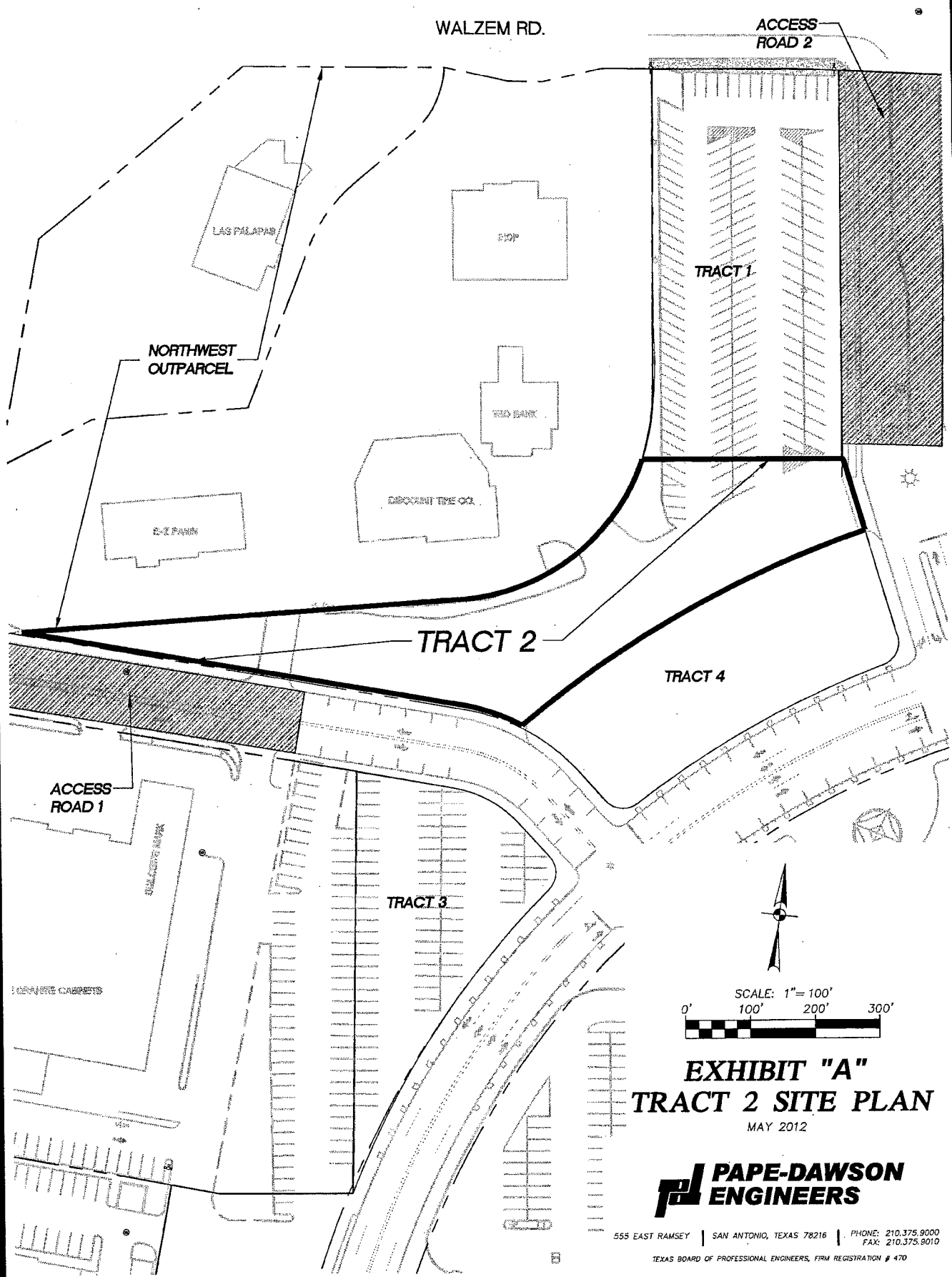

EXHIBIT "A"
TRACT 2 SITE PLAN

MAY 2012

PAPE-DAWSON ENGINEERS

555 EAST RAMSEY | SAN ANTONIO, TEXAS 78216 | PHONE: 210.375.9000 FAX: 210.375.9010

TEXAS BOARD OF PROFESSIONAL ENGINEERS, FIRM REGISTRATION # 470

Date: May 11, 2012, 4:01pm User ID: GMoenius
File: P:\69\84\30\Design\Exhibits\120511-NEIMAN SITE PLAN EXHIBIT E-2.dwg

THIS DOCUMENT HAS BEEN PRODUCED FROM MATERIAL THAT WAS STORED AND/OR TRANSMITTED ELECTRONICALLY AND MAY HAVE BEEN INADVERTENTLY ALTERED. RELY ONLY ON FINAL HARDCOPY MATERIALS BEARING THE CONSULTANT'S ORIGINAL SIGNATURE AND SEAL.

EXHIBIT B

BEGINNING at a 3/4" iron rod found in the east line of Interstate Highway (IH) 35/ Loop 410 (R.O.W. Varies), also being the southwest corner of said Lot 44, and being the northwest corner of Lot 36, of the Replat of Toys "R" Us Subdivision, recorded in Volume 9520, Page 187, (D.P.R.B.C.T.), for the southwest corner and **POINT OF BEGINNING** hereof, from which a 4" Texas Department of Transportation (TXDOT) brass disk monument found in the east line of said IH 35/ Loop 410 at station 1882+00 and offset right 213.20', bears S09°56'18"W, a distance of 454.36 feet;

THENCE, with the east line of said IH 35/ Loop 410, same being the west line of said Lot 44, N09°56'18"E, a distance of 437.50 feet to 1/2-inch iron rod found for an angle point hereof, same being the southwest corner of Lot 45 of said Replat Establishing Simon Apple Garden;

THENCE, leaving the east line of said IH 35/ Loop 410, same being the west line of said Lot 44, with the common line between said Lots 44 and 45, the following five (5) courses and distances:

1) S80°21'18"E, a distance of 217.15 feet to a PK nail found for an angle point hereof, same being the southeast corner of said Lot 45, and a southeast corner of said Lot 44;
2) N10°05'00"E, a distance of 147.36 feet to a 1/2-inch iron rod found for an angle point hereof, same being a northeast corner for said Lot 45, also being an angle point for said Lot 44;
3) N80°16'37"W, a distance of 22.47 feet to a 1/2-inch iron rod found for an angle point hereof, same being an angle point for said Lots 44 and 45;
4) N09°43'58"E, a distance of 9.05 feet to a 1/2-inch iron rod found for an angle point hereof, same being a northeast corner for said Lot 45, also being an angle point for said Lot 44;
5) N80°08'26"W, a distance of 195.02 feet to a 1/2-inch iron rod found for an angle point hereof, same being the northwest corner of said Lot 45, also being an angle point of said Lot 44, same being a point in the east line of said IH 35/ Loop 410;

THENCE, with the east line of said IH 35/ Loop 410, same being the west line of said Lot 44, N09°56'18"E, a distance of 64.23 feet to a 1/2-inch iron rod with "Vickery" cap found for an angle point hereof, same being the southwest corner of Lot 46 of said Replat Establishing Simon Apple Garden, also being an angle point for said Lot 44;

THENCE, leaving the east line of said IH35/ Loop 410, same being the west line of said Lot 44, with the common line between said Lots 44 and 46, S80°07'28"E, a distance of 225.13 feet to a 1/2-inch iron found for an angle point hereof, same being the southeast corner of said Lot 46, also being an angle point for said Lot 44;

THENCE, continuing with the common line between said Lots 44 and 46, N09°56'34"E, a distance of 230.05 feet a 1/2-inch iron rod found for an angle point hereof, same being the northeast corner of said Lot 46, same being an angle point for said Lot 44;

THENCE, crossing through said Lot 24, S80°02'51"E, a distance of 37.96 feet to a PK nail found for an angle point hereof, same being an angle point for said 11.5384 acre tract, also being an angle point for said Lot 44;

THENCE, continuing through said Lot 24, with a north line of said 11.5384 acre tract, N89°45'32"E, a distance of 103.11 feet to a PK nail found for an angle point hereof, same being an angle point of said 11.5384 acre tract, said point lies within said Lot 24;

THENCE, continuing through said Lot 24, with a west line of said 11.5384 acre tract, N00°36'38"E, a distance of 327.41 feet to a PK nail found for an angle point hereof, same being an angle point of said 11.5384 acre tract, said point lies within said Lot 24;

THENCE, continuing through said Lot 24, with a south line of said 11.5384 acre tract, N80°48'25"W, a distance of 311.55 feet to a PK nail found for an angle point hereof, same being an angle point of said 11.5384 acre tract, and being a point in the west line of said Lot 24, also being a point in the east line of said IH35/ Loop 410;

THENCE, with the west line of said Lot 24, same being the east line of said IH 35/ Loop 410, N09°56'18"E, a distance of 54.60 feet to a 1/2-inch iron rod with "Doucet & Assoc," cap set for a northwest corner hereof, same being a northwest corner of said Lot 24, and the southwest corner of Lot 22 of the Simon Subdivision recorded in Volume 7300, Page 69, (D.P.R.B.C.T.);

THENCE, with the south line of said Lot 22, and the north line of said Lot 24, N85°26'50"E, a distance of 381.62 feet to a PK nail with "Brown" shiner found for a point of curvature (P.C.) hereof, same being a P.C. for said Lot 22, also being a northwest corner and P.C. of said Lot 25;

THENCE, continuing with the southeast line of said Lot 22, and with the northwest line of said Lot 25, along a curve to the left, whose radius is 159.75 feet, whose delta is 85°23'33", at an arc length of 238.09 feet, and overall chord which bears N42°47'06"E, a distance 216.66 feet to a 1/2-inch iron rod with

"Vickery" aluminum cap found for a point of tangency (P.T.) hereof, same being a P.T. for said Lots 22 and 25;

THENCE, continuing with the west line of said Lot 22, and the east line of said Lot 25, N00°05'45"E, a distance of 249.80 to a 1/2-inch iron rod with "Vickery" cap found for a northwest corner hereof, same being a northwest corner of said Lot 25, and a northeast corner of said Lot 22, same being a point in the south line of Walzem Road/ Farm to Market (FM) 1976 (R.O.W. Varies);

THENCE, with the south line of said Walzem Road/ FM 1976, and the north line of said Lot 25, N89°47'19"E, a distance of 112.39 feet to a Mag nail with "Brown" shiner found for an angle point hereof, same being an angle point for said Lot 25, also being an angle point for said Walzem Road/ FM 1976, from which a 4" Texas Department of Transportation (TXDOT) brass disk monument found bears, S76°06'59"W, a distance of 1.29 feet;

THENCE, continuing with the south line of said Walzem Road/ FM 1976, and the north line of said Lot 25, S88°27'18"E, a distance of 120.88 feet to a Mag nail with "Doucet" washer set for an angle point hereof;

THENCE, leaving the south line of said Walzem Road/ FM 1976, same being the north line of said Lot 25, passing through said Lot 25 the next four (4) courses and distances:

1) S00°17'20"E, distance of 268.51 feet to a Mag nail with "Doucet" washer set for an angle point hereof;
2) Along a curve to the right, whose radius is 921.48 feet, whose delta is 01°33'47"", whose arc length is 25.14 feet, and whose chord bears N77°14'29"E, a distance of 25.14 feet to a Mag nail with "Doucet" washer set for a point of reverse curvature (P.R.C.) hereof;

3) Along a curve to the left, whose radius is 750.00 feet, whose delta is 09°26'18", whose arc length is 123.55 feet, and whose chord bears N73°18'14"E, a distance of 123.41 feet to a Mag nail with "Doucet" washer set for a point of compound curvature (P.C.C.) hereof;
4) Along a curve to the left, whose radius is 2010.40 feet, whose delta is 03°54'26", whose arc length is 137.10' feet, and whose chord bears N66°37'52"E, a distance of 137.07 feet to a Mag nail with "Doucet" washer set for a point of compound curvature (P.C.C.) hereof;

THENCE, continuing through said Lot 25, and in part through said Lot 44, along a curve to the left, whose radius is 500.00 feet, whose delta is 10°19'44", at an arc length of 14.77 feet passing the common line between said Lots 25 and 44, for an overall arc length of 90.14 feet, and whose overall chord bears N59°30'47"E, a distance of 90.02 feet to a Mag nail with "Doucet" washer set for a P.R.C. hereof, said point lies within said Lot 44;

THENCE, continuing in part through said Lot 44, and through said Lot 38, along a curve to the right, whose radius is 500.00 feet, whose delta is 11°52'41", at an arc length of 3.44 feet passing the common line between said Lots 44 and 38, for an overall arc length of 103.66 feet, and whose overall chord bears N60°17'16"E, a distance of 103.47 feet to a Mag nail with "Doucet" washer set for a P.T. hereof, said point lies in said Lot 38;

THENCE, continuing through said Lot 38, N16°51'51"W, a distance of 69.10 feet to a PK nail with "Brown" shiner found for an angle point hereof, same being a point in the south line of said Walzem Road/ FM 1976, also being the northern most northwest corner of said Lot 38, and the northeast corner of said Lot 44;

THENCE, with the south line of said Walzem Road/ FM 1976, same being the north line of said Lot 38, N89°44'36"E, a distance of 592.04 feet to a 1/2-inch iron rod with "Vickery" aluminum cap found for an angle point hereof, same being an angle point in the south line of said Walzem Road/ FM 1976, and an angle point in the north line of said Lot 38;

THENCE, continuing with the south line of said Walzem Road/ FM 1976, same being the north line of said Lot 38, N88°28'52"E, a distance of 17.99 feet to a "X" cut in concrete for the northern most northeast corner hereof, same being the northern most northeast corner of said Lot 38, also being the northwest corner of Lot 39 of said Replat of Subdivision Plat of Simon Subdivision,

THENCE, leaving the south line of said Walzem Road/ FM 1976, with the common line between said Lots 38 and 39 the following four (4) courses and distances:

1) S00°16'05"E, a distance of 151.24 feet to a 1/2-inch iron rod with "Vickery" aluminum cap found for an angle point hereof, same being the southwest corner of said Lot 39, and an angle point for said Lot 38;
2) N89°45'07"E, a distance of 131.79 feet to a 1/2-inch iron rod found for an angle point hereof, same being a southeast corner of said Lot 39, also being an angle point for said Lot 38;
3) N00°14'38"W, a distance of 18.06 feet to a 1/2-inch iron rod with "Vickery" cap found for an angle point hereof, same being an angle point for said Lots 38 and 39;

4) N89°37'31"E, a distance of 27.57 feet to a PK nail found for the eastern most northeast corner hereof, same being the eastern most southeast corner for said Lot 39, and the eastern most northeast corner of said Lot 38, also being a point in the west line of Lot 2, Block 1 of the Replat and Subdivision Plat Establishing Roosevelt High School Subdivision recorded in Volume 9566, Page 132, (D.P.R.B.C.T.):

THENCE, in part with the east line of Lot 38 and in part with the east line of Lot 37, both of said Replat of Simon Subdivision, and with the west line of Lot 2 of said Roosevelt High School, S00°13'42"E, at a distance of 685.73 feet passing the northeast corner of Lot 37, and being the southeast corner of Lot 38, for a total distance of 1379.71 feet to a PK Nail with "Brown" washer found for an interior ell corner hereof, said point is also an interior ell corner of said Lot 37, and being the southwest corner of said Lot 2;

THENCE, with a north line of said Lot 37, and in part with the south line of said Lot 2, N89°35'15"E, a distance of 63.93 feet to a PK with Shiner found for an exterior ell corner hereof, said point is also an exterior ell corner of said Lot 37;

THENCE, in part with an east line of said Lot 37, and in part with an east line of Lot 44 of said Replat Establishing Simon Apple Garden, S00°31'25"E, a distance of 145.30 feet to a 1/2" iron rod found for a southeast corner hereof, said point is also a southeast corner of said Lot 44 and being the northwest corner of Lot 12, Block 10 of Camelot Subdivision Unit 7, recorded in Volume 6500, Page 144 (D.P.R.B.C.T.), and being a point in the east line of a 40' City Public Service Board Easement as shown on said plat,

THENCE, with the south line of said Lot 44, and the north line of said 40' City Service Board Easement, S89°43'01"W, a distance of 39.73 feet to a 1/2" iron rod found for an interior ell corner hereof, said point is also a point on the west line of said 40' City Public Service Board Easement, and being an interior ell corner of said Lot 44;

THENCE, with the west line of said 40' City Public Service Board Easement, and a west line of said Lot 44, S00°56'32"W, a distance of 15.88 feet to a 1/2" iron rod found for an exterior ell corner hereof, said point is also an exterior ell corner of said Lot 44, and being the northeast corner of Lot 13 of said Camelot Subdivision;

THENCE, in part with the north line of Lots 13-26, Block "D" of said Camelot Subdivision, and in part with the north line of Lot 9, Block "B", of Camelot Subdivision Unit 5A, recorded in Volume 6500, Page 16 (D.P.R.B.C.T.), and in part with the north line of Lot 49 of Windsor Square Wal-Mart III recorded in Volume 9560, Page 80 (D.P.R.B.C.T.), and in part with the north line of Lot 36 of said Toys "R" Us, S89°31'43"W, a distance of 2200.44 feet to the POINT OF BEGINNING and containing 66.9915 Acre (2,918,150 sq. ft.) of land, more or less.

"SAVE AND EXCEPT the Property described on Exhibit B-1 attached hereto and made a part hereof for all purposes"

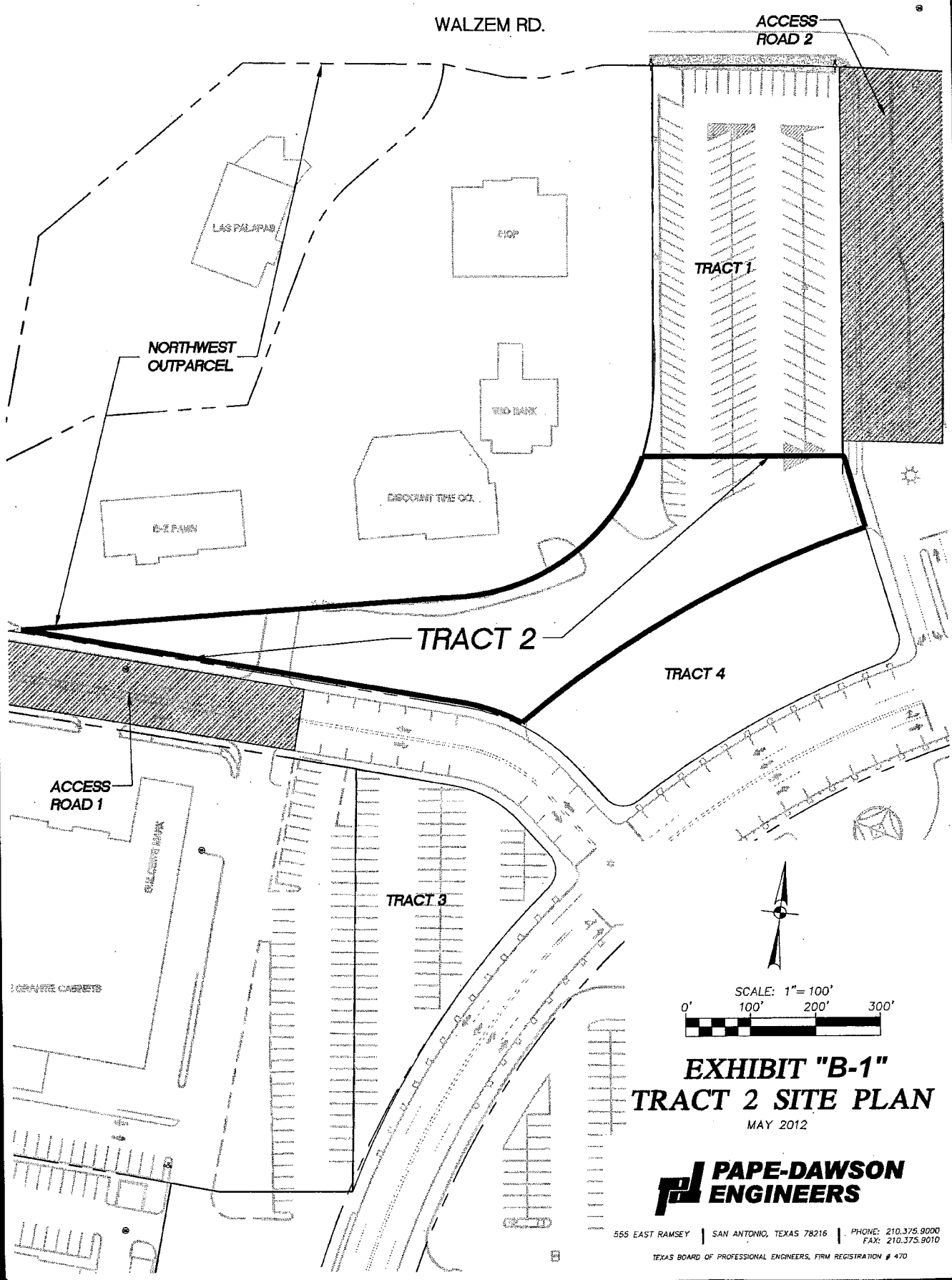

EXHIBIT "B-1"
TRACT 2 SITE PLAN

MAY 2012

PAPE-DAWSON ENGINEERS

555 EAST RAMSEY | SAN ANTONIO, TEXAS 78216 | PHONE: 210.375.9000 FAX: 210.375.9010

TEXAS BOARD OF PROFESSIONAL ENGINEERS, FIRM REGISTRATION # 470

Date: May 11, 2012, 4:01pm User ID: GMoenius
File: P:\69\84\30\Design\Exhibits\120511-NEMAN SITE PLAN EXHIBIT E-2.dwg

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TERMINATION AND RELEASE AGREEMENT

STATE OF TEXAS §
§
COUNTY OF BEXAR §

This TERMINATION AND RELEASE AGREEMENT (this "**Release**") is entered into this _____ day of _____, 2012, by JAMES C. NIEMANN, TRUSTEE FOR THE NFP PARTNERSHIP, a Texas limited partnership("**NFP**"), RACKSPACE US, INC., a Delaware corporation ("**Rackspace**"), and WINDCREST ECONOMIC DEVELOPMENT CORPORATION, on behalf of itself and the City of Windcrest, Texas ("**Windcrest**").

RECITALS

A. NFP is the Owner of certain real property in the City of Windcrest, Bexar County, Texas, which comprises all of (i) that certain property at the southeast corner of IH-35 and Walzem Road, as more particularly described in the Agreement (as defined below), and (ii) Owners adjoining tract to the south beginning at the IH 35 frontage road and extending to within 220 feet of King Arthur Drive, as more particularly described in the Agreement (such property as defined in the Agreement being collectively referred to herein as the "**NFP Parcels**"), also being described on **Exhibit A** attached hereto.

B. The NFP Parcels are located adjacent to that certain property, formerly known as Windsor Park Mall, as more particularly described on **Exhibit B** attached hereto and made a part hereof for all purposes (the "**Former Mall Property**"). Windcrest is the Owner of the Former Mall Property and Rackspace is the ground lessee thereof.

C. The NFP Parcels and the Former Mall Property are subject to, encumbered by, and have certain rights, pursuant to that certain Agreement dated August 25, 1972, recorded in Volume 6935, Page 332, in the Deed Records of Bexar County Texas (the "**Original Agreement**"), as amended by that certain Agreement dated January 24, 1977, recorded in Volume 8009, Page 221, in the Deed Records of Bexar County Texas (the "**First Amendment**"), and that certain Satisfaction and Release dated September 15, 1977, recorded in Volume 8273, Page 575, in the Deed Records of Bexar County Texas (the "**Second Amendment**") (the Original Agreement, First Amendment and Second Amendment being collectively referred to herein as, the "**Agreement**").

D. The Former Mall Property is being redeveloped, and, in connection with such redevelopment, the Windcrest, as the Owner, and Rackspace, as the Occupant, of the Former Mall Property have requested and the Owners of the NFP Parcels have agreed to release and terminate the Agreement in its entirety.

E. As the Owner of the NFP Parcels, NFP desires to terminate and release in its entirety the Agreement; and as the respective Owner and Occupant of the Former Mall Property, Windcrest and Rackspace desire to terminate and release in its entirety the Agreement.

NOW THEREFORE, for and in consideration of One and No/100 Dollar ($1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, the Owner of the NFP Parcels and the Owner and Occupant of the Former Mall Property hereby recites and agrees as follows:

1. Recitals Incorporated; Exhibits Incorporated. The Recitals set forth above are hereby incorporated by this reference and shall be deemed terms and provisions hereof with the same force and effect as if fully set forth in this Section 1. All exhibits attached to this Release shall be deemed incorporated into this Release for all purposes hereunder.

2. Authority. NFP is the current Owner of the NFP Parcels and is the successor-in-interest to the rights and obligations in the Agreement affecting and inuring to the benefit of the NFP Parcels, and NFP has the authority to enter into this Release as to the NFP Parcels, without the joinder of any other party, including without limitation, any Occupant, Permittee or mortgagee of the NFP Parcels.

Windcrest is the current Owner of the Former Mall Property and is the successor-in-interest to the rights and obligations in the Agreement affecting and inuring to the benefit of the Former Mall Property, and Windcrest has the authority to enter into this Release as to the Former Mall Property, without the joinder of any other party, including without limitation, any Occupant, Permittee or mortgagee of the Former Mall Property (except for the specific consent of Rackspace as the ground lessee thereof attached hereto and made a part hereof for all purposes).

3. Termination and Release. The Owners of the NFP Parcel and the Owner and Occupant of the Former Mall Property do hereby terminate and release in its entirety the Agreement. From and after the date hereof, the Agreement shall be deemed null and void and of no further force or effect.

4. Defined Terms. For purposes of this Release, (i) the term "**Owner**" shall mean the record, fee simple owner of all or any portion of the respective parcels; (ii) the term "**Occupant**" shall mean any individual, partnership, firm, association, corporation, limited liability company, trust, governmental agency, administrative tribunal or any other form of business or legal entity, from time to time, entitled to the use and occupancy of all or any portion of the respective parcels, as Owner or under any ground lease, lease, sublease, license, concession or other similar agreement as to the respective parcels; and (iii) the term "**Permittee**" shall mean the officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees and licensees of any Owner or Occupants insofar as their activities relate to the intended use of the respective parcels.

5. Runs With the Land; Binding Effect; Capitalized Terms. From and after the date hereof, this Release shall run with the land and shall (i) be binding upon and inure to the benefit of the Owners, Occupants and Permittees of the NFP Parcels (and their respective successors

and assigns) and the Owners, Occupants and Permittees of the Former Mall Property (and their respective successors and assigns). All capitalized terms used herein but not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement, as applicable.

[Signature Pages Follow]

EXECUTED to be effective the date first written above.

James C. Niemann, Trustee for The NFP Partnership,
a Texas limited partnership

By: _____
Name: James C. Niemann
Title: Trustee

STATE OF TEXAS §
§
COUNTY OF _____ §

This instrument was acknowledged before me the ___ day of _____, 2012, by James C. Niemann, Trustee of The NFP Partnership, a Texas limited partnership, on behalf of said limited partnership.

_____
Notary Public, in and for
The State of Texas

RACKSPACE US, INC.
a Delaware corporation

By: _____
Name: _____
Title: _____

THE STATE OF _____ §
§
COUNTY OF _____ §

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, the _____ of Rackspace US, Inc., a Delaware corporation, on behalf of said corporation.

_____
Notary Public in and for
The State of _____

WINDCREST ECONOMIC DEVELOPMENT CORPORATION

By: _____
Name: _____
Title: _____

THE STATE OF _____ §
§
COUNTY OF _____ §

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, the _____ of Windcrest Economic Development Corporation, on behalf of said corporation.

_____
Notary Public in and for
THE STATE OF _____

Exhibit A
NFP Parcels

That certain property comprising all of Lot 23, Walzem Road Subdivision, being more particularly described on the map or plat thereof recorded in Volume 7100, Page 12 of the Deed and Plat Records of Bexar County, Texas.

TOGETHER WITH:

That certain property comprising all of Lot 30, N.C.B. 12190, Simon Subdivision, being more particularly described on the map or plat thereof recorded in Volume 7800, Page 187 of the Deed and Plat Records of Bexar County, Texas.

TOGETHER WITH:

That certain property comprising all of Lot 36, of the Replat of Toys R' Us Subdivision, being more particularly described on the map or plat thereof recorded in Volume 9520, Page 187 of the Deed and Plat Records of Bexar County, Texas.

EXHIBIT B

BEGINNING at a 3/4" iron rod found in the east line of Interstate Highway (IH) 35/ Loop 410 (R.O.W. Varies), also being the southwest corner of said Lot 44, and being the northwest corner of Lot 36, of the Replat of Toys "R" Us Subdivision, recorded in Volume 9520, Page 187, (D.P.R.B.C.T.), for the southwest corner and POINT OF BEGINNING hereof, from which a 4" Texas Department of Transportation (TXDOT) brass disk monument found in the east line of said IH 35/ Loop 410 at station 1882+00 and offset right 213.20', bears S09°56'18"W, a distance of 454.36 feet;

THENCE, with the east line of said IH 35/ Loop 410, same being the west line of said Lot 44, N09°56'18"E, a distance of 437.50 feet to 1/2-inch iron rod found for an angle point hereof, same being the southwest corner of Lot 45 of said Replat Establishing Simon Apple Garden;

THENCE, leaving the east line of said IH 35/ Loop 410, same being the west line of said Lot 44, with the common line between said Lots 44 and 45, the following five (5) courses and distances:

1) S80°21'18"E, a distance of 217.15 feet to a PK nail found for an angle point hereof, same being the southeast corner of said Lot 45, and a southeast corner of said Lot 44;
2) N10°05'00"E, a distance of 147.36 feet to a 1/2-inch iron rod found for an angle point hereof, same being a northeast corner for said Lot 45, also being an angle point for said Lot 44;
3) N80°16'37"W, a distance of 22.47 feet to a 1/2-inch iron rod found for an angle point hereof, same being an angle point for said Lots 44 and 45;
4) N09°43'58"E, a distance of 9.05 feet to a 1/2-inch iron rod found for an angle point hereof, same being a northeast corner for said Lot 45, also being an angle point for said Lot 44;
5) N80°08'26"W, a distance of 195.02 feet to a 1/2-inch iron rod found for an angle point hereof, same being the northwest corner of said Lot 45, also being an angle point of said Lot 44, same being a point in the east line of said IH 35/ Loop 410;

THENCE, with the east line of said IH 35/ Loop 410, same being the west line of said Lot 44, N09°56'18"E, a distance of 64.23 feet to a 1/2-inch iron rod with "Vickery" cap found for an angle point hereof, same being the southwest corner of Lot 46 of said Replat Establishing Simon Apple Garden, also being an angle point for said Lot 44;

THENCE, leaving the east line of said IH35/ Loop 410, same being the west line of said Lot 44, with the common line between said Lots 44 and 46, S80°07'28"E, a distance of 225.13 feet to a 1/2-inch iron found for an angle point hereof, same being the southeast corner of said Lot 46, also being an angle point for said Lot 44;

THENCE, continuing with the common line between said Lots 44 and 46, N09°56'34"E, a distance of 230.05 feet a 1/2-inch iron rod found for an angle point hereof, same being the northeast corner of said Lot 46, same being an angle point for said Lot 44;

THENCE, crossing through said Lot 24, S80°02'51"E, a distance of 37.96 feet to a PK nail found for an angle point hereof, same being an angle point for said 11.5384 acre tract, also being an angle point for said Lot 44;

THENCE, continuing through said Lot 24, with a north line of said 11.5384 acre tract, N89°45'32"E, a distance of 103.11 feet to a PK nail found for an angle point hereof, same being an angle point of said 11.5384 acre tract, said point lies within said Lot 24;

THENCE, continuing through said Lot 24, with a west line of said 11.5384 acre tract, N00°36'38"E, a distance of 327.41 feet to a PK nail found for an angle point hereof, same being an angle point of said 11.5384 acre tract, said point lies within said Lot 24;

THENCE, continuing through said Lot 24, with a south line of said 11.5384 acre tract, N80°48'25"W, a distance of 311.55 feet to a PK nail found for an angle point hereof, same being an angle point of said 11.5384 acre tract, and being a point in the west line of said Lot 24, also being a point in the east line of said IH35/ Loop 410;

THENCE, with the west line of said Lot 24, same being the east line of said IH 35/ Loop 410, N09°56'18"E, a distance of 54.60 feet to a 1/2-inch iron rod with "Doucet & Assoc," cap set for a northwest corner hereof, same being a northwest corner of said Lot 24, and the southwest corner of Lot 22 of the Simon Subdivision recorded in Volume 7300, Page 69, (D.P.R.B.C.T.);

THENCE, with the south line of said Lot 22, and the north line of said Lot 24, N85°26'50"E, a distance of 381.62 feet to a PK nail with "Brown" shiner found for a point of curvature (P.C.) hereof, same being a P.C. for said Lot 22, also being a northwest corner and P.C. of said Lot 25;

THENCE, continuing with the southeast line of said Lot 22, and with the northwest line of said Lot 25, along a curve to the left, whose radius is 159.75 feet, whose delta is 85°23'33", at an arc length of 238.09 feet, and overall chord which bears N42°47'06"E, a distance 216.66 feet to a 1/2-inch iron rod with

"Vickery" aluminum cap found for a point of tangency (P.T.) hereof, same being a P.T. for said Lots 22 and 25;

THENCE, continuing with the west line of said Lot 22, and the east line of said Lot 25, N00°05'45"E, a distance of 249.80 to a 1/2-inch iron rod with "Vickery" cap found for a northwest corner hereof, same being a northwest corner of said Lot 25, and a northeast corner of said Lot 22, same being a point in the south line of Walzem Road/ Farm to Market (FM) 1976 (R.O.W. Varies);

THENCE, with the south line of said Walzem Road/ FM 1976, and the north line of said Lot 25, N89°47'19"E, a distance of 112.39 feet to a Mag nail with "Brown" shiner found for an angle point hereof, same being an angle point for said Lot 25, also being an angle point for said Walzem Road/ FM 1976, from which a 4" Texas Department of Transportation (TXDOT) brass disk monument found bears, S76°06'59"W, a distance of 1.29 feet;

THENCE, continuing with the south line of said Walzem Road/ FM 1976, and the north line of said Lot 25, S88°27'18"E, a distance of 120.88 feet to a Mag nail with "Doucet" washer set for an angle point hereof;

THENCE, leaving the south line of said Walzem Road/ FM 1976, same being the north line of said Lot 25, passing through said Lot 25 the next four (4) courses and distances:

1) S00°17'20"E, distance of 268.51 feet to a Mag nail with "Doucet" washer set for an angle point hereof;
2) Along a curve to the right, whose radius is 921.48 feet, whose delta is 01°33'47"", whose arc length is 25.14 feet, and whose chord bears N77°14'29"E, a distance of 25.14 feet to a Mag nail with "Doucet" washer set for a point of reverse curvature (P.R.C.) hereof;

3) Along a curve to the left, whose radius is 750.00 feet, whose delta is 09°26'18", whose arc length is 123.55 feet, and whose chord bears N73°18'14"E, a distance of 123.41 feet to a Mag nail with "Doucet" washer set for a point of compound curvature (P.C.C.) hereof;
4) Along a curve to the left, whose radius is 2010.40 feet, whose delta is 03°54'26", whose arc length is 137.10' feet, and whose chord bears N66°37'52"E, a distance of 137.07 feet to a Mag nail with "Doucet" washer set for a point of compound curvature (P.C.C.) hereof;

THENCE, continuing through said Lot 25, and in part through said Lot 44, along a curve to the left, whose radius is 500.00 feet, whose delta is 10°19'44", at an arc length of 14.77 feet passing the common line between said Lots 25 and 44, for an overall arc length of 90.14 feet, and whose overall chord bears N59°30'47"E, a distance of 90.02 feet to a Mag nail with "Doucet" washer set for a P.R.C. hereof, said point lies within said Lot 44;

THENCE, continuing in part through said Lot 44, and through said Lot 38, along a curve to the right, whose radius is 500.00 feet, whose delta is 11°52'41", at an arc length of 3.44 feet passing the common line between said Lots 44 and 38, for an overall arc length of 103.66 feet, and whose overall chord bears N60°17'16"E, a distance of 103.47 feet to a Mag nail with "Doucet" washer set for a P.T. hereof, said point lies in said Lot 38;

THENCE, continuing through said Lot 38, N16°51'51"W, a distance of 69.10 feet to a PK nail with "Brown" shiner found for an angle point hereof, same being a point in the south line of said Walzem Road/ FM 1976, also being the northern most northwest corner of said Lot 38, and the northeast corner of said Lot 44;

THENCE, with the south line of said Walzem Road/ FM 1976, same being the north line of said Lot 38, N89°44'36"E, a distance of 592.04 feet to a 1/2-inch iron rod with "Vickery" aluminum cap found for an angle point hereof, same being an angle point in the south line of said Walzem Road/ FM 1976, and an angle point in the north line of said Lot 38;

THENCE, continuing with the south line of said Walzem Road/ FM 1976, same being the north line of said Lot 38, N88°28'52"E, a distance of 17.99 feet to a "X" cut in concrete for the northern most northeast corner hereof, same being the northern most northeast corner of said Lot 38, also being the northwest corner of Lot 39 of said Replat of Subdivision Plat of Simon Subdivision;

THENCE, leaving the south line of said Walzem Road/ FM 1976, with the common line between said Lots 38 and 39 the following four (4) courses and distances:

1) S00°16'05"E, a distance of 151.24 feet to a 1/2-inch iron rod with "Vickery" aluminum cap found for an angle point hereof, same being the southwest corner of said Lot 39, and an angle point for said Lot 38;
2) N89°45'07"E, a distance of 131.79 feet to a 1/2-inch iron rod found for an angle point hereof, same being a southeast corner of said Lot 39, also being an angle point for said Lot 38;
3) N00°14'38"W, a distance of 18.06 feet to a 1/2-inch iron rod with "Vickery" cap found for an angle point hereof, same being an angle point for said Lots 38 and 39;

4) N89°37'31"E, a distance of 27.57 feet to a PK nail found for the eastern most northeast corner hereof, same being the eastern most southeast corner for said Lot 39, and the eastern most northeast corner of said Lot 38, also being a point in the west line of Lot 2, Block 1 of the Replat and Subdivision Plat Establishing Roosevelt High School Subdivision recorded in Volume 9566, Page 132, (D.P.R.B.C.T.);

THENCE, in part with the east line of Lot 38 and in part with the east line of Lot 37, both of said Replat of Simon Subdivision, and with the west line of Lot 2 of said Roosevelt High School, S00°13'42"E, at a distance of 685.73 feet passing the northeast corner of Lot 37, and being the southeast corner of Lot 38, for a total distance of 1379.71 feet to a PK Nail with "Brown" washer found for an interior ell corner hereof, said point is also an interior ell corner of said Lot 37, and being the southwest corner of said Lot 2;

THENCE, with a north line of said Lot 37, and in part with the south line of said Lot 2, N89°35'15"E, a distance of 63.93 feet to a PK with Shiner found for an exterior ell corner hereof, said point is also an exterior ell corner of said Lot 37;

THENCE, in part with an east line of said Lot 37, and in part with an east line of Lot 44 of said Replat Establishing Simon Apple Garden, S00°31'25"E, a distance of 145.30 feet to a 1/2" iron rod found for a southeast corner hereof, said point is also a southeast corner of said Lot 44 and being the northwest corner of Lot 12, Block 10 of Camelot Subdivision Unit 7, recorded in Volume 6500, Page 144 (D.P.R.B.C.T.), and being a point in the east line of a 40' City Public Service Board Easement as shown on said plat,

THENCE, with the south line of said Lot 44, and the north line of said 40' City Service Board Easement, S89°43'01"W, a distance of 39.73 feet to a 1/2" iron rod found for an interior ell corner hereof, said point is also a point on the west line of said 40' City Public Service Board Easement, and being an interior ell corner of said Lot 44;

THENCE, with the west line of said 40' City Public Service Board Easement, and a west line of said Lot 44, S00°56'32"W, a distance of 15.88 feet to a 1/2" iron rod found for an exterior ell corner hereof, said point is also an exterior ell corner of said Lot 44, and being the northeast corner of Lot 13 of said Camelot Subdivision;

THENCE, in part with the north line of Lots 13-26, Block "D" of said Camelot Subdivision, and in part with the north line of Lot 9, Block "B", of Camelot Subdivision Unit 5A, recorded in Volume 6500, Page 16 (D.P.R.B.C.T.), and in part with the north line of Lot 49 of Windsor Square Wal-Mart III recorded in Volume 9560, Page 80 (D.P.R.B.C.T.), and in part with the north line of Lot 36 of said Toys "R" Us, S89°31'43"W, a distance of 2200.44 feet to the POINT OF BEGINNING and containing 66.9915 Acre (2,918,150 sq. ft.) of land, more or less.

OCT-20-77 177930 /87981 5.00

829129

STATE OF TEXAS)
) SS:
COUNTY OF BEXAR)

SATISFACTION AND RELEASE

WHEREAS, the undersigned FRED NIEMANN and wife, VIRGINIA NIEMANN, and JAMES CHARLES NIEMANN, TRUSTEE (hereinafter referred to collectively as "Niemanns") heretofore entered into a certain Agreement with Windsor Park Development Company (hereinafter referred to as "Windsor Park"), dated January 24, 1977, and recorded in Volume 8009, Page 222, in the Deed Records of Bexar County, Texas, requiring the said Windsor Park to widen the existing extension of Gwain Drive so that it will abut and touch the south boundary line of the 73.9 acre tract referred to in said Agreement, as per the prior Agreement between the parties dated August 25, 1972, and recorded in Volume 6935, Page 332, Deed Records of Bexar County, Texas; and

WHEREAS, the said Windsor Park has now completed said work as called for by said agreements.

NOW, THEREFORE, in consideration of the premises and for One Dollar ($1.00) and other valuable consideration, the receipt and sufficiency of all of which is acknowledged, the undersigned Niemanns hereby acknowledge and agree that all of said work called for under the above referenced Agreements for the widening of the existing extension of Gwain Drive as aforesaid has been fully and finally completed by the said Windsor Park in accordance with the terms of said Agreements and to the satisfaction of the undersigned Niemanns, and the undersigned Niemanns do hereby forever release, discharge and acquit the said Windsor Park, its successors and assigns, from any and all further liability, obligations, responsibility, claims, demands and actions in connection with the widening of Gwain Drive as called for under said Agreements.

IN WITNESS WHEREOF, the undersigned parties have hereto affixed their signatures, this 15 day of September, 1977.

Fred Niemann
FRED NIEMANN

Virginia Niemann
VIRGINIA NIEMANN

James Charles Niemann, Trustee
JAMES CHARLES NIEMANN, TRUSTEE

The undersigned consents and joins in the foregoing.

Larry Niemann
LARRY NIEMANN (as former Trustee and predecessor to James Charles Niemann, Trustee)

VOL. 8273 PAGE 575

STATE OF TEXAS)
) SS:
COUNTY OF TRAVIS)

Before me, a Notary Public in and for said County and State, on this day personally appeared FRED NIEMANN and VIRGINIA NIEMANN, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they each executed said instrument for the purposes and consideration therein expressed.

Given under my hand and seal of office this the 1st day of September, 1977.

Mary Ann Holcomb
Notary Public in and for Travis County, Texas

My Commission Expires:

May 19, 1979

STATE OF TEXAS)
) SS:
COUNTY OF TRAVIS)

Before me, a Notary Public in and for said County and State, on this day personally appeared JAMES CHARLES NIEMANN and LARRY NIEMANN, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they each executed said instrument for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office this the 1st day of September, 1977.

Mary Ann Holcomb
Notary Public in and for Travis County, Texas

My Commission Expires:

May 19, 1979

5.00

Return to:
Dann, Pecar, Newman,
Talesnick & Kleiman
P. O. Box 44109
Indianapolis, Indiana 46244
Attn: Norman R. Newman

VOL 8273 PAGE 577

FILED IN MY OFFICE
ROBERT D. GREEN
COUNTY CLERK BEXAR CO.

1977 OCT 20 PM 2 36

STATE OF TEXAS
COUNTY OF BEXAR

I hereby certify that this instrument was FILED on the date and at the time stamped hereon by me and was duly RECORDED in the Official Public Records of Bexar County, Texas, as stamped hereon by me.

OCT 21 1977

COUNTY CLERK
BEXAR COUNTY, TEXAS

TERMINATION AND RELEASE AGREEMENT

STATE OF TEXAS §
§
COUNTY OF BEXAR §

This TERMINATION AND RELEASE AGREEMENT (this "**Release**") is entered into this _____ day of _____, 2012, by (i) GVD COMMERCIAL PROPERTIES, INC., a California corporation ("**GVD**"), (ii) MONTE MAC NO. 2, a California limited partnership ("**MM2**"), (iii) WINDCREST FIRESTONE, LLC, a Texas limited liability company ("**Firestone**"), (iv) ANTHON MINOR, LTD., a Texas limited partnership ("**Anthon Minor**"), (v) RACKSPACE US, INC., a Delaware corporation ("**Rackspace**"), and (vi) WINDCREST ECONOMIC DEVELOPMENT CORPORATION, a Section 4(b) corporation, on behalf of itself and the City of Windcrest, Texas (collectively, "**Windcrest**").

RECITALS

A. GVD is the Owner of certain real property in the City of Windcrest, Bexar County, Texas, more particularly described on **Exhibit A** attached hereto (the "**Olive Garden Parcel**").

B. MM2 is the Owner of certain real property in the City of Windcrest, Bexar County, Texas, more particularly described on **Exhibit B** attached hereto (the "**Benny's Parcel**"); MM2 is also the Owner of certain real property in the City of Windcrest, Bexar County, Texas, more particularly described on **Exhibit C** attached hereto (the "**Applebee's Parcel**").

C. Firestone is the Owner of certain real property in the City of Windcrest, Bexar County, Texas, more particularly described on **Exhibit D** attached hereto (the "**Firestone Parcel**").

C. Anthon Minor is the Owner of certain real property in the City of Windcrest, Bexar County, Texas, more particularly described on **Exhibit E** attached hereto (the "**Anthon Minor Parcel**") (the Olive Garden Parcel, Benny's Parcel, Applebee's Parcel, Firestone Parcel and Anthon Minor Parcel are each referred to herein as an "**Outparcel**" and collectively referred to herein as the "**Outparcels**").

D. The Outparcels are located adjacent to that certain property, formerly known as Windsor Park Mall, as more particularly described on **Exhibit F** attached hereto and made a part hereof for all purposes (the "**Former Mall Property**"). Windcrest is the Owner of the Former Mall Property and Rackspace is the ground lessee thereof.

E. The Outparcels and the Former Mall Property are subject to, encumbered by, and have certain rights, pursuant to that certain Easement and Operating Agreement, dated

September 10, 1974, recorded in Volume 7451, Page 649, in the Real Property Records of Bexar County, Texas (the "**Original REA**"); as amended, modified and partially released by: (i) that certain Modification of Easement and Operating Agreement, dated May 5, 1975, recorded in Volume 7693, Page 199, in the Real Property Records of Bexar County, Texas; (ii) that certain Second Amendment of Easement and Operating Agreement, dated April 15, 1977, recorded in Volume 8069, Page 704, in the Real Property Records of Bexar County, Texas; (iii) that certain Third Amendment of Easement and Operating Agreement, dated July 16, 1985, recorded in Volume 4820, Page 1829, in the Real Property Records of Bexar County, Texas; (iv) that certain Fourth Amendment of Easement and Operating Agreement, dated November 20, 1990, recorded in Volume 5004, Page 585, in the Real Property Records of Bexar County, Texas; and (v) that certain Partial Mutual Release and Modification of Easement and Operating Agreement, dated January 25, 2007, recorded in Volume 12689, Page 1166, in the Real Property Records of Bexar County, Texas (the "**Partial Release and Modification Agreement**") (the Original REA, the amendments thereto, and the Partial Release and Modification Agreement are collectively referred to herein as the "**REA**"), including, but not limited to, certain rights of cross-access between the Outparcels and the Former Mall Property, including but not limited to the Mall Loop Road (as defined in the Partial Release and Modification Agreement). The Outparcels and the Former Mall Property represent the entire property encumbered by the REA.

F. The Former Mall Property is being redeveloped, and, in connection with such redevelopment, Windcrest, as the Owner, and Rackspace, as the Occupant, of the Former Mall Property have requested and the Owners of the Outparcels have agreed to release and terminate the REA in its entirety, including but not limited to the Mall Loop Road.

G. As the Owners of the respective Outparcels, GVD, MM2, Firestone and Anthon Minor desires to terminate and release in its entirety the REA, including but not limited to the Mall Loop Road; and as the respective Owner and Occupant of the Former Mall Property, Windcrest and Rackspace desire to terminate and release in its entirety the REA, including but not limited to the Mall Loop Road.

NOW THEREFORE, for and in consideration of One and No/100 Dollar ($1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, the Owners of the respective Outparcels and the Owner and Occupant of the Former Mall Property hereby recite and agree as follows:

1. Recitals Incorporated; Exhibits Incorporated. The Recitals set forth above are hereby incorporated by this reference and shall be deemed terms and provisions hereof with the same force and effect as if fully set forth in this Section 1. All exhibits attached to this Release shall be deemed incorporated into this Release for all purposes hereunder.

2. Authority. GVD is the current Owner of the Olive Garden Parcel and is the successor-in-interest to the rights and obligations in the REA affecting and inuring to the benefit of the Olive Garden Parcel, and GVD has the authority to enter into this Release as to the Olive Garden Parcel, without the joinder of any other party, including without limitation, any Occupant, Permittee or mortgagee of the Olive Garden Parcel (except for the specific consents attached hereto and made a part hereof for all purposes).

MM2 is the current Owner of the Benny's Parcel and Applebee's Parcel and is the successor-in-interest to the rights and obligations in the REA affecting and inuring to the benefit of the Benny's Parcel and Applebee's Parcel, respectively, and MM2 has the authority to enter into this Release as to the Benny's Parcel and Applebee's Parcel, without the joinder of any other party, including without limitation, any Occupant, Permittee or mortgagee of the Benny's Parcel and Applebee's Parcel, respectively (except for the specific consents attached hereto and made a part hereof for all purposes).

Firestone is the current Owner of the Firestone Parcel and is the successor-in-interest to the rights and obligations in the REA affecting and inuring to the benefit of the Firestone Parcel, and Firestone has the authority to enter into this Release as to the Firestone Parcel, without the joinder of any other party, including without limitation, any Occupant, Permittee or mortgagee of the Firestone Parcel (except for the specific consents attached hereto and made a part hereof for all purposes).

Anthon Minor is the current Owner of the Anthon Minor Parcel and is the successor-in-interest to the rights and obligations in the REA affecting and inuring to the benefit of the Anthon Minor Parcel, and Anthon Minor has the authority to enter into this Release as to the Anthon Minor Parcel, without the joinder of any other party, including without limitation, any Occupant, Permittee or mortgagee of the Anthon Minor Parcel (except for the specific consents attached hereto and made a part hereof for all purposes).

Windcrest is the current Owner of the Former Mall Property and is the successor-in-interest to the rights and obligations in the REA affecting and inuring to the benefit of the Former Mall Property, and Windcrest has the authority to enter into this Release as to the Former Mall Property, without the joinder of any other party, including without limitation, any Occupant, Permittee or mortgagee of the Former Mall Property (except for the specific consent of Rackspace as the ground lessee thereof attached hereto and made a part hereof for all purposes).

3. Termination and Release. The Owners of the respective Outparcels and the Owner and Occupant of the Former Mall Property do hereby terminate and release in its entirety the REA, including but not limited to the Mall Loop Road, and including without limitation, all obligations and/or liabilities pertaining to the REA that may have accrued prior to the date of this Release. From and after the date hereof, the REA shall be deemed null and void and of no further force or effect, including but not limited to any terms, provisions and conditions related to the Mall Loop Road.

4. Defined Terms. For purposes of this Release, (i) the term "**Owner**" shall mean the record, fee simple owner of all or any portion of the respective parcels; (ii) the term "**Occupant**" shall mean any individual, partnership, firm, association, corporation, limited liability company, trust, governmental agency, administrative tribunal or any other form of business or legal entity, from time to time, entitled to the use and occupancy of all or any portion of the respective parcels, as Owner or under any ground lease, lease, sublease, license, concession or other similar agreement as to the respective parcels; and (iii) the term "**Permittee**" shall mean the officers, directors, employees, agents, contractors, customers, vendors, suppliers,

visitors, invitees and licensees of any Owner or Occupants insofar as their activities relate to the intended use of the respective parcels.

5. Runs With the Land; Binding Effect; Capitalized Terms. From and after the date hereof, this Release shall run with the land and shall (i) be binding upon and inure to the benefit of the Owners, Occupants and Permittees of the respective Outparcels (and their respective successors and assigns) and the Owners, Occupants and Permittees of the Former Mall Property (and their respective successors and assigns). All capitalized terms used herein but not otherwise defined herein shall have the meanings ascribed to such terms in the REA.

[Signature Pages Follow]

EXECUTED to be effective the date first written above.

GVD COMMERCIAL PROPERTIES, INC.,
a California corporation

By: _____
David A. Case, CFO

STATE OF CALIFORNIA) SS
COUNTY OF ORANGE)

On _____, 2012, before me, _____ (Notary Public) personally appeared David A. Case, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

MONTE MAC NO. 2,
a California limited partnership

By: GVD Investments, Inc.,
a California corporation,
its General Partner

By: _____
David A. Case, CFO

STATE OF CALIFORNIA) SS
COUNTY OF ORANGE)

On _____, 2012, before me, _____ (Notary Public) personally appeared David A. Case, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

WINDCREST FIRESTONE, LLC,
a Texas limited liability company

By: _____
Name: _____
Title: _____

STATE OF _____ §
§
COUNTY OF _____ §

This instrument was acknowledged before me the ___ day of _____, 2012, by _____, the _____ of Windcrest Firestone, LLC, a Texas limited liability company, on behalf of said limited liability company.

_____
Notary Public, in and for
The State of _____

ANTHON MINOR, LTD.,
a Texas limited partnership

By: Anthon Minor, G.P., LLC,
a Texas limited liability company,
its General Partner

By: _____
Name: _____
Title: _____

STATE OF _____ §
§
COUNTY OF _____ §

This instrument was acknowledged before me the ___ day of _____, 2012, by _____, the _____ of Anthon Minor, G.P., LLC, a Texas limited liability company, the General Partner of Anthon Minor, Ltd., a Texas limited partnership, on behalf of said limited liability company and said limited partnership.

_____
Notary Public, in and for
The State of _____

RACKSPACE US, INC.,
a Delaware corporation

By: _____
Name: _____
Title: _____

THE STATE OF _____ §
§
COUNTY OF _____ §

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, the _____ of Rackspace US, Inc., a Delaware corporation, on behalf of said corporation.

_____
Notary Public in and for
The State of _____

WINDCREST ECONOMIC DEVELOPMENT CORPORATION

By: _____
Name: _____
Title: _____

THE STATE OF _____ §
§
COUNTY OF _____ §

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, the _____ of Windcrest Economic Development Corporation, on behalf of said corporation.

_____
Notary Public in and for
THE STATE OF _____

Joinder of Mortgagee
[Anthon Minor Parcel]

The Wells Fargo Bank, NA ("Lienholder"), is the owner and holder of indebtedness that is secured in whole or in part by liens and security interests (the "Liens") that encumber the Anthon Minor Parcel. Lienholder, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agrees to and does hereby consent to this Release.

LIENHOLDER:

Wells Fargo Bank, NA

By: _____
Name: _____
Title: _____

THE STATE OF TEXAS §
§
COUNTY OF BEXAR §

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, the _____ of Wells Fargo Bank, NA, a national banking association, on behalf of said national banking association.

_____
Notary Public in and for
The State of Texas

Joinder of Tenant
[Anthon Minor Parcel]

H & L Imports, Inc, a Texas corporation ("Tenant") is the tenant of the Anthon Minor Parcel, pursuant to that certain Lease Agreement between Anthon Minor and Tenant, as amended from time to time. Tenant joins in the execution of this Release as the current tenant of the Anthon Minor Parcel and agrees to and does hereby consent to this Release.

TENANT:

H & L Imports, Inc.,
a Texas corporation

By: _____
Name: Man Hung Li
Title: President

THE STATE OF TEXAS §
§
COUNTY OF BEXAR §

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by Man Hung Li, the President of H & L Imports, Inc., a Texas corporation, on behalf of said corporation.

_____
Notary Public in and for
The State of Texas

Joinder of Tenant
[Applebee's Parcel]

NEIGHBORHOOD RESTAURANT PARTNERS, LLC, a Delaware limited liability company ("Applebee's Tenant") is the tenant of the Applebee's Parcel, pursuant to that certain Lease Agreement between MM2 and Applebee's Tenant, as amended from time to time. Applebee's Tenant joins in the execution of this Release as the current tenant of the Applebee's Parcel and agrees to and does hereby consent to this Release.

APPLEBEE'S TENANT:

NEIGHBORHOOD RESTAURANT PARTNERS, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

THE STATE OF _____ §
§
COUNTY OF _____ §

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, the _____ of **NEIGHBORHOOD RESTAURANT PARTNERS, LLC, a Delaware limited liability company**, on behalf of said limited liability company.

_____
Notary Public in and for
THE STATE OF _____

Joinder of Tenant
[Olive Garden Parcel]

DARDEN SW, LLC, a Florida limited liability company ("Olive Garden Tenant") is the tenant of the Olive Garden Parcel, pursuant to that certain Lease Agreement between GVD and Olive Garden Tenant, as amended from time to time. Olive Garden Tenant joins in the execution of this Release as the current tenant of the Olive Garden Parcel and agrees to and does hereby consent to this Release.

OLIVE GARDEN TENANT:

DARDEN SW, LLC,
a Florida limited liability company

By: GMRI, Inc.,
Its Manager

By: _____
Name: _____
Title: _____

THE STATE OF _____ §
§
COUNTY OF _____ §

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, the _____ of **GMRI, Inc., the Manager of Darden SW, LLC, a Florida limited liability company**, on behalf of said corporation and limited liability company.

_____
Notary Public in and for
THE STATE OF _____

Exhibit A
Olive Garden Parcel

Lot 46, NCB12190 Simon Apple Garden Subdivision, an Addition to the City of San Antonio, Bexar County, Texas, according to the map or plat thereof recorded in Volume 9551, Page 187-88, in the Deed and Plat Records of Bexar County, Texas.

Exhibit B
Benny's Parcel

Lot 39, NCB12190, Simon Subdivision, an Addition to the City of San Antonio, Bexar County, Texas, according to the map or plat thereof recorded in Volume 9522, Page 107-108, in the Deed and Plat Records of Bexar County, Texas.

Exhibit C
Applebee's Parcel

Lot 45, NCB12190 Simon Apple Garden Subdivision, an Addition to the City of San Antonio, Bexar County, Texas, according to the map or plat thereof recorded in Volume 9551, Page 187-88, in the Deed and Plat Records of Bexar County, Texas.

EXHIBIT D

DESCRIPTION OF A TRACT OF LAND CONTAINING 1.8079 ACRE (78,758 SQUARE FEET) BEING PARTIALLY OUT OF LOT 25 OF THE AMENDING PLAT OF A PORTION OF SIMON SUBDIVISION RECORDED IN VOLUME 9522, PAGE 105-106; OF THE DEED AND PLAT RECORDS OF BEXAR COUNTY, TEXAS (D.P.R.B.C.T.), AND BEING PARTIALLY OUT OF LOT 44 OF THE REPLAT ESTABLISHING SIMON APPLE GARDEN, RECORDED IN VOLUME 9551, PAGE 187 (D.P.R.B.C.T.), SAID 1.8079 ACRE (78,758 SQUARE FEET) OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS, (ALL BEARINGS ARE BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, GRID NORTH, SOUTH CENTRAL ZONE (4204), ALL DISTANCES WERE ADJUSTED TO SURFACE USING A COMBINED SCALE FACTOR OF 1.0001644100065):

BEGINNING at a PK nail found in concrete in the south right of way line of FM 1976 (Walzem Road), (R.o.w. Varies), also being the most northerly northwest corner of Lot 44 of said Simon Apple Garden, and being the northeast corner of Lot 25 of said Simon Subdivision, for a point on line and **POINT OF BEGINNING** hereof, from which a PK Nail found at an angle point in the common line of said Lot 25 and Lot 44, bears S00°18'27"E, a distance of 149.55 feet;

THENCE, with the north line of said Lot 44, and the south right of way line of said Walzem Road, S88°27'18"E, a distance of 121.72 feet to an "X" cut found in concrete for an angle point hereof, said point being an angle point in the north line of said Lot 44 and being an angle point in the south right of way line of said Walzem Road, from which a Brass Disk Row Monument found bears, S89°26'24"W, a distance of 1.06 feet;

THENCE, continuing with the north line of said Lot 44, and the south right of way line of said Walzem Road, N89°44'36"E, a distance of 38.20 feet to a PK Nail found for the northeast corner hereof, said point being the most northerly northeast corner of said Lot 44, and being the northwest corner of Lot 38 of the Replat of Simon Subdivision recorded in Volume 9522, Page 107-108

(D.P.R.B.C.T.), from which a PK nail found at an angle point in the common line between said Lot 44 and Lot 38 bears, S00°14'22"E, a distance of 64.24 feet;

THENCE, leaving the south right of way line of said Walzem Road, and crossing through Lot 38 of said Replat of Simon Subdivision, S16°51'51"E, a distance of 69.10 feet to a mag nail with "Doucet" washer set for the southeast corner hereof, said point is also a point of curvature of the herein described tract, and being a point on the west line of a proposed right of way of Mall Loop Road, not currently dedicated as right of way;

THENCE, continuing through said Lot 38, and in part across said Lot 44, along the north line of said Mall Loop Road, along a curve to the left, whose radius is 500.00 feet, whose delta is 11°52'41", at an arc length of 100.22 feet crossing the common line between said Lot 38 and 44, for an overall arc length of 103.66 feet, and overall chord which bears S60°17'16"W, a distance of 103.47 feet to a 1/2" iron rod with "Doucet" cap set for a point of reverse curvature hereof, said point lies within said Lot 44;

THENCE, continuing though said Lot 44, and in part across Lot 25 of said Simon Subdivision, and continuing along the north line of said Mall Loop Road, along a curve to the right, whose radius is 500.00 feet, whose delta is 10°19'44", at an arc length of 75.37 feet crossing the common line between said Lot 44 and 25, for an overall arc length of 90.14 feet, and overall chord which bears S59°30'47"W, a distance of 90.02 feet to a Mag Nail with "Doucet" washer set for a point of compound curvature hereof, said point lies within said Lot 25;

THENCE, continuing through said Lot 25, and along the north line of said Mall Loop Road, the following three (3) courses and distances

1) Along a curve to the right, whose radius is 2010.40 feet, whose delta is 03°54'26", whose arc length is 137.10 feet, and whose chord bears S66°37'52"W, a distance of 137.07 feet to a Mag Nail with "Doucet" washer set for a point of compound curvature hereof;
2) Along a curve to the right, whose radius is 750.00 feet, whose delta is 09°26'18", whose arc length is 123.55 feet, and whose chord bears S73°18'14"W, a distance of 123.44 feet to a Mag Nail with "Doucet" washer set for a point of reverse curvature hereof;
3) Along a curve to the left, whose radius is 921.48 feet, whose delta is 01°33'47", whose arc length is 25.14 feet, and whose chord bears S77°14'29"W, a distance of 25.14 feet to a Mag Nail with "Doucet" washer set for the southwest corner hereof, said point is also an interior ell corner of said Mall Loop Road;

THENCE, continuing through said Lot 25, along an east line of said Mall Loop Road, N00°17'20W, a distance of 268.51 feet to a mag nail with "Doucet" washer set for the northwest corner hereof, said point is also in the north line of said Lot 25, and being a point in the south right of way line of said Walzem Road;

THENCE, with the north line of said Lot 25, and the south right of way line of said Walzem Road, S88°27'18"E, a distance of 257.50 feet to the **POINT OF BEGINNING** and containing 1.8079 Acre (78,758 sq. ft.) of land, more or less.

6-6-07

Jason Ward, R.P.L.S.
Texas Registration No. 5811
Doucet & Associates Inc.,
7401 B Hwy. 71 West
Suite 160
Austin, Texas 78735

Date

STATE OF TEXAS
REGISTERED
JASON WARD
5811
PROFESSIONAL
LAND SURVEYOR

EXHIBIT E

BEING 2.6424 ACRES (115,104 SQUARE FEET) OF LAND OUT OF LOT 24, NEW CITY BLOCK 1250, SIMON SUBDIVISION, IN THE CITY SAN ANTONIO, BEXAR COUNTY, TEXAS, ACCORDING TO PLAT THEREOF RECORDED IN VOLUME 7800, PAGE 9 THROUGH 13, INCLUSIVE, DEED AND PLAT RECORDS OF BEXAR COUNTY, TEXAS. SAID 2.6424 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED IN METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A FOUND CAPPED ½ INCH IRON ROD FOUND FOR THE COMMON WESTERLY CORNER OF LOTS 24 AND 26 IN THE EASTERLY LINE OF INTERSTATE HIGHWAY 35 (LOOP 410) (300 FEET WIDE);

THENCE NORTH 10 DEGREES 11 MINUTES 06 SECONDS EAST, ALONG SAID EASTERLY LINE OF INTERSTATE HIGHWAY 35 (LOOP 410) A DISTANCE OF 337.40 FEET TO A 5/8 INCH IRON ROD SET FOR THE NORTHWESTERLY CORNER;

THENCE NORTH 80 DEGREES 30 MINUTES 17 SECONDS EAST, A DISTANCE OF 311.52 FEET TO A P.K. NAIL SET FOR CORNER;

THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS WEST, A DISTANCE OF 327.26 FEET TO A P.K. NAIL SET FOR THE SOUTHEAST CORNER ;

THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST, A DISTANCE OF 103.15 FEET TO A 5/8 INCH IRON ROD FOUND FOR AN ANGLE POINT;

THENCE NORTH 79 DEGREES 48 MINUTES 00 SECONDS WEST, ALONG THE COMMON LINE OF LOT 24 AND 26, A DISTANCE OF 263.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 2.6424 ACRES (115,104 SQUARE FEET) OF LAND.

EXHIBIT F

BEGINNING at a 3/4" iron rod found in the east line of Interstate Highway (IH) 35/ Loop 410 (R.O.W. Varies), also being the southwest corner of said Lot 44, and being the northwest corner of Lot 36, of the Replat of Toys "R" Us Subdivision, recorded in Volume 9520, Page 187, (D.P.R.B.C.T.), for the southwest corner and POINT OF BEGINNING hereof, from which a 4" Texas Department of Transportation (TXDOT) brass disk monument found in the east line of said IH 35/ Loop 410 at station 1882+00 and offset right 213.20', bears S09°56'18"W, a distance of 454.36 feet;

THENCE, with the east line of said IH 35/ Loop 410, same being the west line of said Lot 44, N09°56'18"E, a distance of 437.50 feet to 1/2-inch iron rod found for an angle point hereof, same being the southwest corner of Lot 45 of said Replat Establishing Simon Apple Garden;

THENCE, leaving the east line of said IH 35/ Loop 410, same being the west line of said Lot 44, with the common line between said Lots 44 and 45, the following five (5) courses and distances:

1) S80°21'18"E, a distance of 217.15 feet to a PK nail found for an angle point hereof, same being the southeast corner of said Lot 45, and a southeast corner of said Lot 44;
2) N10°05'00"E, a distance of 147.36 feet to a 1/2-inch iron rod found for an angle point hereof, same being a northeast corner for said Lot 45, also being an angle point for said Lot 44;
3) N80°16'37"W, a distance of 22.47 feet to a 1/2-inch iron rod found for an angle point hereof, same being an angle point for said Lots 44 and 45;
4) N09°43'58"E, a distance of 9.05 feet to a 1/2-inch iron rod found for an angle point hereof, same being a northeast corner for said Lot 45, also being an angle point for said Lot 44;
5) N80°08'26"W, a distance of 195.02 feet to a 1/2-inch iron rod found for an angle point hereof, same being the northwest corner of said Lot 45, also being an angle point of said Lot 44, same being a point in the east line of said IH 35/ Loop 410;

THENCE, with the east line of said IH 35/ Loop 410, same being the west line of said Lot 44, N09°56'18"E, a distance of 64.23 feet to a 1/2-inch iron rod with "Vickery" cap found for an angle point hereof, same being the southwest corner of Lot 46 of said Replat Establishing Simon Apple Garden, also being an angle point for said Lot 44;

THENCE, leaving the east line of said IH35/ Loop 410, same being the west line of said Lot 44, with the common line between said Lots 44 and 46, S80°07'28"E, a distance of 225.13 feet to a 1/2-inch iron found for an angle point hereof, same being the southeast corner of said Lot 46, also being an angle point for said Lot 44;

THENCE, continuing with the common line between said Lots 44 and 46, N09°56'34"E, a distance of 230.05 feet a 1/2-inch iron rod found for an angle point hereof, same being the northeast corner of said Lot 46, same being an angle point for said Lot 44;

THENCE, crossing through said Lot 24, S80°02'51"E, a distance of 37.96 feet to a PK nail found for an angle point hereof, same being an angle point for said 11.5384 acre tract, also being an angle point for said Lot 44;

THENCE, continuing through said Lot 24, with a north line of said 11.5384 acre tract, N89°45'32"E, a distance of 103.11 feet to a PK nail found for an angle point hereof, same being an angle point of said 11.5384 acre tract, said point lies within said Lot 24;

THENCE, continuing through said Lot 24, with a west line of said 11.5384 acre tract, N00°36'38"E, a distance of 327.41 feet to a PK nail found for an angle point hereof, same being an angle point of said 11.5384 acre tract, said point lies within said Lot 24;

THENCE, continuing through said Lot 24, with a south line of said 11.5384 acre tract, N80°48'25"W, a distance of 311.55 feet to a PK nail found for an angle point hereof, same being an angle point of said 11.5384 acre tract, and being a point in the west line of said Lot 24, also being a point in the east line of said IH35/ Loop 410;

THENCE, with the west line of said Lot 24, same being the east line of said IH 35/ Loop 410, N09°56'18"E, a distance of 54.60 feet to a 1/2-inch iron rod with "Doucet & Assoc," cap set for a northwest corner hereof, same being a northwest corner of said Lot 24, and the southwest corner of Lot 22 of the Simon Subdivision recorded in Volume 7300, Page 69, (D.P.R.B.C.T.);

THENCE, with the south line of said Lot 22, and the north line of said Lot 24, N85°26'50"E, a distance of 381.62 feet to a PK nail with "Brown" shiner found for a point of curvature (P.C.) hereof, same being a P.C. for said Lot 22, also being a northwest corner and P.C. of said Lot 25;

THENCE, continuing with the southeast line of said Lot 22, and with the northwest line of said Lot 25, along a curve to the left, whose radius is 159.75 feet, whose delta is 85°23'33", at an arc length of 238.09 feet, and overall chord which bears N42°47'06"E, a distance 216.66 feet to a 1/2-inch iron rod with

"Vickery" aluminum cap found for a point of tangency (P.T.) hereof, same being a P.T. for said Lots 22 and 25;

THENCE, continuing with the west line of said Lot 22, and the east line of said Lot 25, N00°05'45"E, a distance of 249.80 to a 1/2-inch iron rod with "Vickery" cap found for a northwest corner hereof, same being a northwest corner of said Lot 25, and a northeast corner of said Lot 22, same being a point in the south line of Walzem Road/ Farm to Market (FM) 1976 (R.O.W. Varies);

THENCE, with the south line of said Walzem Road/ FM 1976, and the north line of said Lot 25, N89°47'19"E, a distance of 112.39 feet to a Mag nail with "Brown" shiner found for an angle point hereof, same being an angle point for said Lot 25, also being an angle point for said Walzem Road/ FM 1976, from which a 4" Texas Department of Transportation (TXDOT) brass disk monument found bears, S76°06'59"W, a distance of 1.29 feet;

THENCE, continuing with the south line of said Walzem Road/ FM 1976, and the north line of said Lot 25, S88°27'18"E, a distance of 120.88 feet to a Mag nail with "Doucet" washer set for an angle point hereof;

THENCE, leaving the south line of said Walzem Road/ FM 1976, same being the north line of said Lot 25, passing through said Lot 25 the next four (4) courses and distances:

1) S00°17'20"E, distance of 268.51 feet to a Mag nail with "Doucet" washer set for an angle point hereof;
2) Along a curve to the right, whose radius is 921.48 feet, whose delta is 01°33'47"", whose arc length is 25.14 feet, and whose chord bears N77°14'29"E, a distance of 25.14 feet to a Mag nail with "Doucet" washer set for a point of reverse curvature (P.R.C.) hereof;

3) Along a curve to the left, whose radius is 750.00 feet, whose delta is 09°26'13", whose arc length is 123.55 feet, and whose chord bears N73°18'14"E, a distance of 123.41 feet to a Mag nail with "Doucet" washer set for a point of compound curvature (P.C.C.) hereof;
4) Along a curve to the left, whose radius is 2010.40 feet, whose delta is 03°54'26", whose arc length is 137.10' feet, and whose chord bears N66°37'52"E, a distance of 137.07 feet to a Mag nail with "Doucet" washer set for a point of compound curvature (P.C.C.) hereof;

THENCE, continuing through said Lot 25, and in part through said Lot 44, along a curve to the left, whose radius is 500.00 feet, whose delta is 10°19'44", at an arc length of 14.77 feet passing the common line between said Lots 25 and 44, for an overall arc length of 90.14 feet, and whose overall chord bears N59°30'47"E, a distance of 90.02 feet to a Mag nail with "Doucet" washer set for a P.R.C. hereof, said point lies within said Lot 44;

THENCE, continuing in part through said Lot 44, and through said Lot 38, along a curve to the right, whose radius is 500.00 feet, whose delta is 11°52'41", at an arc length of 3.44 feet passing the common line between said Lots 44 and 38, for an overall arc length of 103.66 feet, and whose overall chord bears N60°17'16"E, a distance of 103.47 feet to a Mag nail with "Doucet" washer set for a P.T. hereof, said point lies in said Lot 38;

THENCE, continuing through said Lot 38, N16°51'51"W, a distance of 69.10 feet to a PK nail with "Brown" shiner found for an angle point hereof, same being a point in the south line of said Walzem Road/ FM 1976, also being the northern most northwest corner of said Lot 38, and the northeast corner of said Lot 44;

THENCE, with the south line of said Walzem Road/ FM 1976, same being the north line of said Lot 38, N89°44'36"E, a distance of 592.04 feet to a 1/2-inch iron rod with "Vickery" aluminum cap found for an angle point hereof, same being an angle point in the south line of said Walzem Road/ FM 1976, and an angle point in the north line of said Lot 38;

THENCE, continuing with the south line of said Walzem Road/ FM 1976, same being the north line of said Lot 38, N88°28'52"E, a distance of 17.99 feet to a "X" cut in concrete for the northern most northeast corner hereof, same being the northern most northeast corner of said Lot 38, also being the northwest corner of Lot 39 of said Replat of Subdivision Plat of Simon Subdivision;

THENCE, leaving the south line of said Walzem Road/ FM 1976, with the common line between said Lots 38 and 39 the following four (4) courses and distances:

1) S00°16'05"E, a distance of 151.24 feet to a 1/2-inch iron rod with "Vickery" aluminum cap found for an angle point hereof, same being the southwest corner of said Lot 39, and an angle point for said Lot 38;
2) N89°45'07"E, a distance of 131.79 feet to a 1/2-inch iron rod found for an angle point hereof, same being a southeast corner of said Lot 39, also being an angle point for said Lot 38;
3) N00°14'38"W, a distance of 18.06 feet to a 1/2-inch iron rod with "Vickery" cap found for an angle point hereof, same being an angle point for said Lots 38 and 39;

4) N89°37'31"E, a distance of 27.57 feet to a PK nail found for the eastern most northeast corner hereof, same being the eastern most southeast corner for said Lot 39, and the eastern most northeast corner of said Lot 38, also being a point in the west line of Lot 2, Block 1 of the Replat and Subdivision Plat Establishing Roosevelt High School Subdivision recorded in Volume 9566, Page 132, (D.P.R.B.C.T.):

THENCE, in part with the east line of Lot 38 and in part with the east line of Lot 37, both of said Replat of Simon Subdivision, and with the west line of Lot 2 of said Roosevelt High School, S00°13'42"E, at a distance of 685.73 feet passing the northeast corner of Lot 37, and being the southeast corner of Lot 38, for a total distance of 1379.71 feet to a PK Nail with "Brown" washer found for an interior ell corner hereof, said point is also an interior ell corner of said Lot 37, and being the southwest corner of said Lot 2;

THENCE, with a north line of said Lot 37, and in part with the south line of said Lot 2, N89°35'15"E, a distance of 63.93 feet to a PK with Shiner found for an exterior ell corner hereof, said point is also an exterior ell corner of said Lot 37;

THENCE, in part with an east line of said Lot 37, and in part with an east line of Lot 44 of said Replat Establishing Simon Apple Garden, S00°31'25"E, a distance of 145.30 feet to a 1/2" iron rod found for a southeast corner hereof, said point is also a southeast corner of said Lot 44 and being the northwest corner of Lot 12, Block 10 of Camelot Subdivision Unit 7, recorded in Volume 6500, Page 144 (D.P.R.B.C.T.), and being a point in the east line of a 40' City Public Service Board Easement as shown on said plat,

THENCE, with the south line of said Lot 44, and the north line of said 40' City Service Board Easement, S89°43'01"W, a distance of 39.73 feet to a 1/2" iron rod found for an interior ell corner hereof, said point is also a point on the west line of said 40' City Public Service Board Easement, and being an interior ell corner of said Lot 44;

THENCE, with the west line of said 40' City Public Service Board Easement, and a west line of said Lot 44, S00°56'32"W, a distance of 15.88 feet to a 1/2" iron rod found for an exterior ell corner hereof, said point is also an exterior ell corner of said Lot 44, and being the northeast corner of Lot 13 of said Camelot Subdivision;

THENCE, in part with the north line of Lots 13-26, Block "D" of said Camelot Subdivision, and in part with the north line of Lot 9, Block "B", of Camelot Subdivision Unit 5A, recorded in Volume 6500, Page 16 (D.P.R.B.C.T.), and in part with the north line of Lot 49 of Windsor Square Wal-Mart III recorded in Volume 9560, Page 80 (D.P.R.B.C.T.), and in part with the north line of Lot 36 of said Toys "R" Us, S89°31'43"W, a distance of 2200.44 feet to the POINT OF BEGINNING and containing 66.9915 Acre (2,918,150 sq. ft.) of land, more or less.

TERMINATION AND RELEASE AGREEMENT

STATE OF TEXAS §
§
COUNTY OF BEXAR §

This TERMINATION AND RELEASE AGREEMENT (this "**Release**") is entered into this _____ day of _____, 2012, by GVD COMMERCIAL PROPERTIES, INC., a California corporation ("**GVD**"), MONTE MAC NO. 2, a California limited partnership ("**MM2**"), RACKSPACE US, INC., a Delaware corporation ("**Rackspace**") and WINDCREST ECONOMIC DEVELOPMENT CORPORATION, a Section 4(b) corporation on behalf of itself and the City of Windcrest, Texas ("**Windcrest**").

RECITALS

A. GVD is the Owner of certain real property in the City of Windcrest, Bexar County, Texas, more particularly described on **Exhibit A** attached hereto (the "**Olive Garden Parcel**").

B. MM2 is the Owner of certain real property in the City of Windcrest, Bexar County, Texas, more particularly described on **Exhibit B** attached hereto (the "**Benny's Parcel**"); MM2 is also the Owner of certain real property in the City of Windcrest, Bexar County, Texas, more particularly described on **Exhibit C** attached hereto (the "**Applebee's Parcel**")(the Olive Garden Parcel, Benny's Parcel and Applebee's Parcel are each referred to herein as an "**Outparcel**" and collectively referred to herein as the "**Outparcels**").

C. The Outparcels are located adjacent to that certain property, formerly known as Windsor Park Mall, as more particularly described on **Exhibit D** attached hereto and made a part hereof for all purposes (the "**Former Mall Property**"). Windcrest is the Owner of the Former Mall Property and Rackspace is the ground lessee thereof.

D. The Outparcels and Former Mall Property are subject to, encumbered by, and have certain rights, pursuant to that certain Covenants, Conditions and Restrictions Agreement, dated November 1, 2000, recorded in Volume 8630, Page 1609, in the Real Property Records of Bexar County, Texas (the "**CCR Agreement**"), including, but not limited to, certain rights of cross-access between the Outparcels and the Former Mall Property. The Outparcels and the Former Mall Property represent the entire property encumbered by the CCR Agreement.

E. The Former Mall Property is being redeveloped, and, in connection with such redevelopment, Windcrest, as the Owner, and Rackspace, as the Occupant, of the Former Mall Property have requested and the Owners of the Outparcels have agreed to release and terminate the CCR Agreement in its entirety.

F. As the Owners of the respective Outparcels, GVD and MM2 desires to terminate and release in its entirety the CCR Agreement; and as the respective Owner and Occupant of the Former Mall Property, Windcrest and Rackspace desire to terminate and release in its entirety the CCR Agreement.

NOW THEREFORE, for and in consideration of One and No/100 Dollar ($1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, the Owners of the respective Outparcels and the Owner and Occupant of the Former Mall Property hereby recite and agree as follows:

1. Recitals Incorporated; Exhibits Incorporated. The Recitals set forth above are hereby incorporated by this reference and shall be deemed terms and provisions hereof with the same force and effect as if fully set forth in this Section 1. All exhibits attached to this Release shall be deemed incorporated into this Release for all purposes hereunder.

2. Authority. GVD is the current Owner of the Olive Garden Parcel and is the successor-in-interest to the rights and obligations in the CCR Agreement affecting and inuring to the benefit of the Olive Garden Parcel, and GVD has the authority to enter into this Release as to the Olive Garden Parcel, without the joinder of any other party, including without limitation, any Occupant, Permittee or mortgagee of the Olive Garden Parcel (except for the specific consents attached hereto and made a part hereof for all purposes).

MM2 is the current Owner of the Benny's Parcel and Applebee's Parcel and is the successor-in-interest to the rights and obligations in the CCR Agreement affecting and inuring to the benefit of the Benny's Parcel and Applebee's Parcel, respectively, and MM2 has the authority to enter into this Release as to the Benny's Parcel and Applebee's Parcel, without the joinder of any other party, including without limitation, any Occupant, Permittee or mortgagee of the Benny's Parcel and Applebee's Parcel, respectively (except for the specific consents attached hereto and made a part hereof for all purposes).

Windcrest is the current Owner of the Former Mall Property and is the successor-in-interest to the rights and obligations in the CCR Agreement affecting and inuring to the benefit of the Former Mall Property, and Windcrest has the authority to enter into this Release as to the Former Mall Property, without the joinder of any other party, including without limitation, any Occupant, Permittee or mortgagee of the Former Mall Property (except for the specific consent of Rackspace as the ground lessee thereof attached hereto and made a part hereof for all purposes).

3. Termination and Release. The Owners of the respective Outparcels and the Owner and Occupant of the Former Mall Property do hereby terminate and release in its entirety the CCR Agreement, including without limitation, all obligations and/or liabilities pertaining to the CCR Agreement that may have accrued prior to the date of this Release. From and after the date hereof, the CCR Agreement shall be deemed null and void and of no further force or effect.

4. Defined Terms. For purposes of this Release, (i) the term "**Owner**" shall mean the record, fee simple owner of all or any portion of the respective parcels; (ii) the term "**Occupant**"

shall mean any individual, partnership, firm, association, corporation, limited liability company, trust, governmental agency, administrative tribunal or any other form of business or legal entity, from time to time, entitled to the use and occupancy of all or any portion of the respective parcels, as Owner or under any ground lease, lease, sublease, license, concession or other similar agreement as to the respective parcels; and (iii) the term "**Permittee**" shall mean the officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees and licensees of any Owner or Occupants insofar as their activities relate to the intended use of the respective parcels.

5. Runs With the Land; Binding Effect; Capitalized Terms. From and after the date hereof, this Release shall run with the land and shall (i) be binding upon and inure to the benefit of the Owners, Occupants and Permittees of the respective Outparcels (and their respective successors and assigns) and the Owners, Occupants and Permittees of the Former Mall Property (and their respective successors and assigns). All capitalized terms used herein but not otherwise defined herein shall have the meanings ascribed to such terms in the CCR Agreement, as applicable.

[Signature Pages Follow]

EXECUTED to be effective the date first written above.

GVD COMMERCIAL PROPERTIES, INC.
a California corporation

By: _____
David A. Case, CFO

STATE OF CALIFORNIA) SS
COUNTY OF ORANGE)

On _____, 2012, before me, _____ (Notary Public) personally appeared David A. Case, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

MONTE MAC NO. 2,
a California limited partnership

By: GVD Investments, Inc.,
a California corporation,
its General Partner

By: _____
David A. Case, CFO

STATE OF CALIFORNIA) SS
COUNTY OF ORANGE)

On _____, 2012, before me, _____ (Notary Public) personally appeared David A. Case, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

RACKSPACE US, INC.,
a Delaware corporation

By: _____
Name: _____
Title: _____

THE STATE OF _____ §
§
COUNTY OF _____ §

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, the _____ of Rackspace US, Inc., a Delaware corporation, on behalf of said corporation.

_____
Notary Public in and for
The State of _____

WINDCREST ECONOMIC DEVELOPMENT CORPORATION

By: _____
Name: _____
Title: _____

THE STATE OF _____ §
§
COUNTY OF _____ §

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, the _____ of Windcrest Economic Development Corporation, on behalf of said corporation.

_____
Notary Public in and for
THE STATE OF _____

Joinder of Tenant
[Applebee's Parcel]

NEIGHBORHOOD RESTAURANT PARTNERS, LLC, a Delaware limited liability company ("Applebee's Tenant") is the tenant of the Applebee's Parcel, pursuant to that certain Lease Agreement between MM2 and Applebee's Tenant, as amended from time to time. Applebee's Tenant joins in the execution of this Release as the current tenant of the Applebee's Parcel and agrees to and does hereby consent to this Release.

APPLEBEE'S TENANT:

NEIGHBORHOOD RESTAURANT PARTNERS, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

THE STATE OF _____ §
§
COUNTY OF _____ §

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, the _____ of **NEIGHBORHOOD RESTAURANT PARTNERS, LLC, a Delaware limited liability company**, on behalf of said limited liability company.

_____
Notary Public in and for
THE STATE OF _____

Joinder of Tenant
[Olive Garden Parcel]

DARDEN SW, LLC, a Florida limited liability company ("Olive Garden Tenant") is the tenant of the Olive Garden Parcel, pursuant to that certain Lease Agreement between GVD and Olive Garden Tenant, as amended from time to time. Olive Garden Tenant joins in the execution of this Release as the current tenant of the Olive Garden Parcel and agrees to and does hereby consent to this Release.

OLIVE GARDEN TENANT:

DARDEN SW, LLC,
a Florida limited liability company

By: GMRI, Inc.,
Its Manager

By: _____
Name: _____
Title: _____

THE STATE OF _____ §
§
COUNTY OF _____ §

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, the _____ of **GMRI, Inc., the Manager of Darden SW, LLC, a Florida limited liability company**, on behalf of said corporation and limited liability company.

_____
Notary Public in and for
THE STATE OF _____

Exhibit A
Olive Garden Parcel

Lot 46, NCB12190 Simon Apple Garden Subdivision, an Addition to the City of San Antonio, Bexar County, Texas, according to the map or plat thereof recorded in Volume 9551, Page 187-88, in the Deed and Plat Records of Bexar County, Texas.

Exhibit B
Benny's Parcel

Lot 39, NCB12190, Simon Subdivision, an Addition to the City of San Antonio, Bexar County, Texas, according to the map or plat thereof recorded in Volume 9522, Page 107-108, in the Deed and Plat Records of Bexar County, Texas.

Exhibit C
Applebee's Parcel

Lot 45, NCB12190 Simon Apple Garden Subdivision, an Addition to the City of San Antonio, Bexar County, Texas, according to the map or plat thereof recorded in Volume 9551, Page 187-88, in the Deed and Plat Records of Bexar County, Texas.

EXHIBIT "D"

BEGINNING at a 3/4" iron rod found in the east line of Interstate Highway (IH) 35/ Loop 410 (R.O.W. Varies), also being the southwest corner of said Lot 44, and being the northwest corner of Lot 36, of the Replat of Toys "R" Us Subdivision, recorded in Volume 9520, Page 187, (D.P.R.B.C.T.), for the southwest corner and **POINT OF BEGINNING** hereof, from which a 4" Texas Department of Transportation (TXDOT) brass disk monument found in the east line of said IH 35/ Loop 410 at station 1882+00 and offset right 213.20', bears S09°56'18"W, a distance of 454.36 feet;

THENCE, with the east line of said IH 35/ Loop 410, same being the west line of said Lot 44, N09°56'18"E, a distance of 437.50 feet to 1/2-inch iron rod found for an angle point hereof, same being the southwest corner of Lot 45 of said Replat Establishing Simon Apple Garden;

THENCE, leaving the east line of said IH 35/ Loop 410, same being the west line of said Lot 44, with the common line between said Lots 44 and 45, the following five (5) courses and distances:

1) S80°21'18"E, a distance of 217.15 feet to a PK nail found for an angle point hereof, same being the southeast corner of said Lot 45, and a southeast corner of said Lot 44;
2) N10°05'00"E, a distance of 147.36 feet to a 1/2-inch iron rod found for an angle point hereof, same being a northeast corner for said Lot 45, also being an angle point for said Lot 44;
3) N80°16'37"W, a distance of 22.47 feet to a 1/2-inch iron rod found for an angle point hereof, same being an angle point for said Lots 44 and 45;
4) N09°43'58"E, a distance of 9.05 feet to a 1/2-inch iron rod found for an angle point hereof, same being a northeast corner for said Lot 45, also being an angle point for said Lot 44;
5) N80°08'26"W, a distance of 195.02 feet to a 1/2-inch iron rod found for an angle point hereof, same being the northwest corner of said Lot 45, also being an angle point of said Lot 44, same being a point in the east line of said IH 35/ Loop 410;

THENCE, with the east line of said IH 35/ Loop 410, same being the west line of said Lot 44, N09°56'18"E, a distance of 64.23 feet to a 1/2-inch iron rod with "Vickery" cap found for an angle point hereof, same being the southwest corner of Lot 46 of said Replat Establishing Simon Apple Garden, also being an angle point for said Lot 44;

THENCE, leaving the east line of said IH35/ Loop 410, same being the west line of said Lot 44, with the common line between said Lots 44 and 46, S80°07'28"E, a distance of 225.13 feet to a 1/2-inch iron found for an angle point hereof, same being the southeast corner of said Lot 46, also being an angle point for said Lot 44;

THENCE, continuing with the common line between said Lots 44 and 46, N09°56'34"E, a distance of 230.05 feet a 1/2-inch iron rod found for an angle point hereof, same being the northeast corner of said Lot 46, same being an angle point for said Lot 44;

THENCE, crossing through said Lot 24, S80°02'51"E, a distance of 37.96 feet to a PK nail found for an angle point hereof, same being an angle point for said 11.5384 acre tract, also being an angle point for said Lot 44;

THENCE, continuing through said Lot 24, with a north line of said 11.5384 acre tract, N89°45'32"E, a distance of 103.11 feet to a PK nail found for an angle point hereof, same being an angle point of said 11.5384 acre tract, said point lies within said Lot 24;

THENCE, continuing through said Lot 24, with a west line of said 11.5384 acre tract, N00°36'38"E, a distance of 327.41 feet to a PK nail found for an angle point hereof, same being an angle point of said 11.5384 acre tract, said point lies within said Lot 24;

THENCE, continuing through said Lot 24, with a south line of said 11.5384 acre tract, N80°48'25"W, a distance of 311.55 feet to a PK nail found for an angle point hereof, same being an angle point of said 11.5384 acre tract, and being a point in the west line of said Lot 24, also being a point in the east line of said IH35/ Loop 410;

THENCE, with the west line of said Lot 24, same being the east line of said IH 35/ Loop 410, N09°56'18"E, a distance of 54.60 feet to a 1/2-inch iron rod with "Doucet & Assoc," cap set for a northwest corner hereof, same being a northwest corner of said Lot 24, and the southwest corner of Lot 22 of the Simon Subdivision recorded in Volume 7300, Page 69, (D.P.R.B.C.T.);

THENCE, with the south line of said Lot 22, and the north line of said Lot 24, N85°26'50"E, a distance of 381.62 feet to a PK nail with "Brown" shiner found for a point of curvature (P.C.) hereof, same being a P.C. for said Lot 22, also being a northwest corner and P.C. of said Lot 25;

THENCE, continuing with the southeast line of said Lot 22, and with the northwest line of said Lot 25, along a curve to the left, whose radius is 159.75 feet, whose delta is 85°23'33", at an arc length of 238.09 feet, and overall chord which bears N42°47'06"E, a distance 216.66 feet to a 1/2-inch iron rod with

"Vickery" aluminum cap found for a point of tangency (P.T.) hereof, same being a P.T. for said Lots 22 and 25;

THENCE, continuing with the west line of said Lot 22, and the east line of said Lot 25, N00°03'45"E, a distance of 249.80 to a 1/2-inch iron rod with "Vickery" cap found for a northwest corner hereof, same being a northwest corner of said Lot 25, and a northeast corner of said Lot 22, same being a point in the south line of Walzem Road/ Farm to Market (FM) 1976 (R.O.W. Varies);

THENCE, with the south line of said Walzem Road/ FM 1976, and the north line of said Lot 25, N89°47'19"E, a distance of 112.39 feet to a Mag nail with "Brown" shiner found for an angle point hereof, same being an angle point for said Lot 25, also being an angle point for said Walzem Road/ FM 1976, from which a 4" Texas Department of Transportation (TXDOT) brass disk monument found bears, S76°06'59"W, a distance of 1.29 feet;

THENCE, continuing with the south line of said Walzem Road/ FM 1976, and the north line of said Lot 25, S88°27'18"E, a distance of 120.88 feet to a Mag nail with "Doucet" washer set for an angle point hereof;

THENCE, leaving the south line of said Walzem Road/ FM 1976, same being the north line of said Lot 25, passing through said Lot 25 the next four (4) courses and distances:

1) S00°17'20"E, distance of 268.51 feet to a Mag nail with "Doucet" washer set for an angle point hereof;
2) Along a curve to the right, whose radius is 921.48 feet, whose delta is 01°33'47"", whose arc length is 25.14 feet, and whose chord bears N77°14'29"E, a distance of 25.14 feet to a Mag nail with "Doucet" washer set for a point of reverse curvature (P.R.C.) hereof;

3) Along a curve to the left, whose radius is 750.00 feet, whose delta is 09°26'15", whose arc length is 123.55 feet, and whose chord bears N73°18'14"E, a distance of 123.41 feet to a Mag nail with "Doucet" washer set for a point of compound curvature (P.C.C.) hereof;
4) Along a curve to the left, whose radius is 2010.40 feet, whose delta is 03°54'26", whose arc length is 137.10' feet, and whose chord bears N66°37'52"E, a distance of 137.07 feet to a Mag nail with "Doucet" washer set for a point of compound curvature (P.C.C.) hereof;

THENCE, continuing through said Lot 25, and in part through said Lot 44, along a curve to the left, whose radius is 500.00 feet, whose delta is 10°19'44", at an arc length of 14.77 feet passing the common line between said Lots 25 and 44, for an overall arc length of 90.14 feet, and whose overall chord bears N59°30'47"E, a distance of 90.02 feet to a Mag nail with "Doucet" washer set for a P.R.C. hereof, said point lies within said Lot 44;

THENCE, continuing in part through said Lot 44, and through said Lot 38, along a curve to the right, whose radius is 500.00 feet, whose delta is 11°52'41", at an arc length of 3.44 feet passing the common line between said Lots 44 and 38, for an overall arc length of 103.66 feet, and whose overall chord bears N60°17'16"E, a distance of 103.47 feet to a Mag nail with "Doucet" washer set for a P.T. hereof, said point lies in said Lot 38;

THENCE, continuing through said Lot 38, N16°51'51"W, a distance of 69.10 feet to a PK nail with "Brown" shiner found for an angle point hereof, same being a point in the south line of said Walzem Road/ FM 1976, also being the northern most northwest corner of said Lot 38, and the northeast corner of said Lot 44;

THENCE, with the south line of said Walzem Road/ FM 1976, same being the north line of said Lot 38, N89°44'36"E, a distance of 592.04 feet to a 1/2-inch iron rod with "Vickery" aluminum cap found for an angle point hereof, same being an angle point in the south line of said Walzem Road/ FM 1976, and an angle point in the north line of said Lot 38;

THENCE, continuing with the south line of said Walzem Road/ FM 1976, same being the north line of said Lot 38, N88°28'52"E, a distance of 17.99 feet to a "X" cut in concrete for the northern most northeast corner hereof, same being the northern most northeast corner of said Lot 38, also being the northwest corner of Lot 39 of said Replat of Subdivision Plat of Simon Subdivision;

THENCE, leaving the south line of said Walzem Road/ FM 1976, with the common line between said Lots 38 and 39 the following four (4) courses and distances:

1) S00°16'05"E, a distance of 151.24 feet to a 1/2-inch iron rod with "Vickery" aluminum cap found for an angle point hereof, same being the southwest corner of said Lot 39, and an angle point for said Lot 38;
2) N89°45'07"E, a distance of 131.79 feet to a 1/2-inch iron rod found for an angle point hereof, same being a southeast corner of said Lot 39, also being an angle point for said Lot 38;
3) N00°14'38"W, a distance of 18.06 feet to a 1/2-inch iron rod with "Vickery" cap found for an angle point hereof, same being an angle point for said Lots 38 and 39;

4) N89°37'31"E, a distance of 27.57 feet to a PK nail found for the eastern most northeast corner hereof, same being the eastern most southeast corner for said Lot 39, and the eastern most northeast corner of said Lot 38, also being a point in the west line of Lot 2, Block 1 of the Replat and Subdivision Plat Establishing Roosevelt High School Subdivision recorded in Volume 9566, Page 132, (D.P.R.B.C.T.);

THENCE, in part with the east line of Lot 38 and in part with the east line of Lot 37, both of said Replat of Simon Subdivision, and with the west line of Lot 2 of said Roosevelt High School, S00°13'42"E, at a distance of 685.73 feet passing the northeast corner of Lot 37, and being the southeast corner of Lot 38, for a total distance of 1379.71 feet to a PK Nail with "Brown" washer found for an interior ell corner hereof, said point is also an interior ell corner of said Lot 37, and being the southwest corner of said Lot 2;

THENCE, with a north line of said Lot 37, and in part with the south line of said Lot 2, N89°35'15"E, a distance of 63.93 feet to a PK with Shiner found for an exterior ell corner hereof, said point is also an exterior ell corner of said Lot 37;

THENCE, in part with an east line of said Lot 37, and in part with an east line of Lot 44 of said Replat Establishing Simon Apple Garden, S00°31'25"E, a distance of 145.30 feet to a 1/2" iron rod found for a southeast corner hereof, said point is also a southeast corner of said Lot 44 and being the northwest corner of Lot 12, Block 10 of Camelot Subdivision Unit 7, recorded in Volume 6500, Page 144 (D.P.R.B.C.T.), and being a point in the east line of a 40' City Public Service Board Easement as shown on said plat,

THENCE, with the south line of said Lot 44, and the north line of said 40' City Service Board Easement, S89°43'01"W, a distance of 39.73 feet to a 1/2" iron rod found for an interior ell corner hereof, said point is also a point on the west line of said 40' City Public Service Board Easement, and being an interior ell corner of said Lot 44;

THENCE, with the west line of said 40' City Public Service Board Easement, and a west line of said Lot 44, S00°56'32"W, a distance of 15.88 feet to a 1/2" iron rod found for an exterior ell corner hereof, said point is also an exterior ell corner of said Lot 44, and being the northeast corner of Lot 13 of said Camelot Subdivision;

THENCE, in part with the north line of Lots 13-26, Block "D" of said Camelot Subdivision, and in part with the north line of Lot 9, Block "B", of Camelot Subdivision Unit 5A, recorded in Volume 6500, Page 16 (D.P.R.B.C.T.), and in part with the north line of Lot #9 of Windsor Square Wal-Mart III recorded in Volume 9560, Page 80 (D.P.R.B.C.T.), and in part with the north line of Lot 36 of said Toys "R" Us, S89°31'43"W, a distance of 2200.44 feet to the POINT OF BEGINNING and containing 66.9915 Acre (2,918,150 sq. ft.) of land, more or less.