

Box 79-2

PLAT NO. S/D 79-7 MAP NO. 5146

NAME TOWNE WEST <sup>SQUARE</sup> SECOND ADDITION

LOCATION: An area south of Maple Street and West  
of Tracy Street

ENGINEER Campbell & Castle

OWNER Towne West Mall Indiana Limited Partnershi

APPLICATION FILED 1-16-79

SKETCH PLAT FILED \_\_\_\_\_

PRELIMINARY FILED 1-16-79

S/D ACTION 1-25-79 approved

FINAL FILED 2-13-79

S/D ACTION 2-22-79 Approved

MAPC ACTION 3-1-79 approved

BCC ACTION 4-3-79 Approved as recorded

RECORDED April 17 1979

REMARKS \_\_\_\_\_

S/D 79-7 - TOWNE WEST<sup>SEMI</sup> SECOND ADD.  
An area south of Maple and west of  
Tracy Street - Campbell & Castle





LAW OFFICES OF  
CURFMAN, HARRIS & WEIGAND

SUITE 830 FIRST NATIONAL BANK BUILDING  
WICHITA, KANSAS 67202  
(316) 263-9111

LAWRENCE WEIGAND  
COUNSEL

LAWRENCE E. CURFMAN  
CHARLES W. HARRIS  
J. L. WEIGAND, JR.  
JOHN R. STALLINGS  
BRIAN G. GRACE  
WINDELL G. SNOW  
JACK SCOTT HINTEER  
VAN R. DELHOTAY  
THOMAS D. BORNIGER  
JOE L. NORTON  
RONALD B. ROSE  
RANDALL K. RATHBUN

October 9, 1979

Mr. Steve Lackey  
Design Chief Engineer  
Dept. of Public Works, Engineering Division  
City Hall, 7th Floor  
455 N. Main  
Wichita, Kansas 67202

Mr. Bill McKinley  
Assistant Traffic Engineer  
Dept. of Traffic Engineering  
City Hall, 8th Floor  
455 N. Main  
Wichita, Kansas 67202

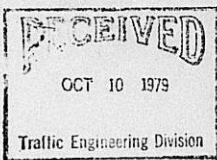
RE: Right-of-Way connecting Kellogg  
Drive with Tracy

Gentlemen:

This letter shall formally serve to notify you that my client, C&W Manhattan Associates, has specifically requested that I place the matter of the proposed dead-ending of Kellogg Drive prior to its connection with Tracy Street on the City Commission agenda as soon as possible to request that the City Commission specifically direct the connection of Kellogg Drive to Tracy.

As you are aware, you have previously informed us that if my client didn't "acquire the additional right-of-way necessary for you" that neither the City nor the Developer would do so and that Kellogg Drive would be dead-ended and not connected with Tracy.

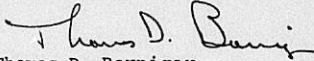
As you are aware, my client does not own the land which would be necessary to acquire in order to provide the additional right-of-way necessary to create the connection between Kellogg Drive and Tracy Streets and has no method of forcing the legal owner of such property to contribute such right-of-way for this project. In view of the fact that all of the other parcels except two (23 out of 25) have been acquired that were necessary for right-of-way, we must assume that this right-of-way could also be acquired.



We note that in the presentation of this matter made to the City Commission at the time the approval of the Traffic geometrics were originally made, K-Mart, in an effort to help reduce the cost which the developer and the city were going to incur, consented to the deletion of a proposed third lane running north-bound on Tracy which would have been required of the Town West developer. The MAPC Minutes of that same meeting indicate that Traffic Engineering then concurred with the geometrics as drawn, providing for a transition lane at the South-end of Tracy, rather than the third North-bound lane, with such transition lane connecting to Kellogg Drive. In our opinion, any change from such geometrics would be a direct violation of the agreement we reached with Town West.

It is my understanding that you will discuss the matter with the representative of Town West. If you wish to have all of us discuss this matter prior to it being set on the City Commission agenda, please advise as soon as possible as I will otherwise plan on setting this matter on the public agenda portion of the City Commission agenda in the near future.

Yours truly,



Thomas D. Borniger  
of CURFMAN, HARRIS & WEIGAND

TDB:rt

CC: Mr. Bill Johnston

C.C. DEAN  
RWB  
SOB



THE CITY OF WICHITA



OFFICE OF THE CITY MANAGER  
CITY HALL - THIRTEENTH FLOOR  
435 NORTH MAIN STREET  
WICHITA, KANSAS 67202  
316 265-4151

RECEIVED

JUL 27 1979

METROPOLITAN PLANNING

ROUTE

July 26, 1979

Mr. B. J. Kingdon  
Architect  
313 South Market  
Wichita, Kansas 67202

Dear Mr. Kingdon:

As you know, on July 17, 1979, the City Commission discussed the question of funding the projected cost overrun in the street improvements in the vicinity of Towne West shopping center. The amount projected as a cost overrun is \$332,053.

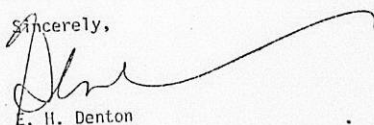
At that time, the Commission took the following action:

"that the Commission approve an allocation based on a 50/50 split of the overage to the proposed Towne West street improvement project with funding to be included in the 1979 Capital Improvement Program; and that the 50/50 split apply to the funding shortage; and any future overages be paid fully by developer and no more by the City at large."

The Commission felt that the 50/50 split of the \$332,053 cost overrun was equitable; however, they wished to go on record as stipulating that the City would not agree to any additional expenditure of local public funds for area street improvements.

We stand ready to work with you to expedite to the maximum possible extent all area improvements to insure that the funds now allocated would be sufficient to construct the improvements.

Sincerely,

  
E. H. Denton  
City Manager

EHD/tpd

cc: The Honorable Board of City Commissioners  
R. W. Bruggeman, Director of Public Works  
Robert A. Lakin, Director of Planning ✓  
Dick Linn, City Engineer

THE CITY OF WICHITA  
OFFICE OF ENGINEERING

DATE July 3, 1979


TO E. H. Denton, City Manager  
FROM R. W. Linn, City Engineer  
SUBJECT Towne West Street Improvements

On July 27, 1976, the City Commission approved funding for Towne West Street improvements. This funding was based on cost estimates prepared and submitted by the developer. The condition of approval was subject to "State funding participation in the amount of \$443,000.00 and further subject to the accuracy of the street improvement cost estimates as prepared by the developer with the stipulation that in the event cost estimates and/or state participation are not as estimated, that the scope of the intended improvements be resubmitted to the City Commission for further review."

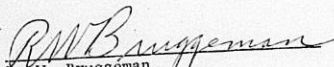
The Engineering Division and Traffic Engineering Division have prepared final and preliminary plans and updated cost estimates for these improvements. Some right-of-way has been acquired. Some factors affecting cost changes are: inflation, downgrading the Kellogg improvement, downgrading the West Street improvement and increased right-of-way costs. The new cost estimates indicate a shortage in the funding of about \$427,433.00. Also, two tracts have not been acquired and possibly another \$40,000.00 may be needed for signals on Maple. Calculations to show how these figures were arrived at are attached.

This information should be presented to the Commission so that funding for these improvements can be established. Construction of the shopping center has commenced. Street paving projects should be initiated at this time.

We will be available to respond to questions.

  
R. W. Linn  
City Engineer

APPROVAL:

  
R. W. Bruggeman  
Director of Public Works

SL:ck

cc: Robert Lakin, Director of Planning ✓  
Paul Graves, Traffic Engineer  
Jim Schaefer, Attorney at Law  
B. J. Kingdon, Law Co.

Attach: (4)

STREET IMPROVEMENTS

Towne West Est. (1976)  
(Includes Signals)

U.S. - 54	1,092,483
Maple	570,826
West	301,134
Tracy	340,542
Taft	105,359
Constr. Cost	2,410,344
Right-of-Way	83,617
Total	2,493,961

Engineering Division Est. (1979)  
(Signals Not Included)

277,588
920,731
419,717
431,912
131,718
2,181,666
142,469
2,324,135

Breakdown of costs on:

Tracy, Taft to Maple

Star	22,677
Theatre	22,238
Towne West	185,137
	230,052
City	6,113
	236,165

Taft, Tracy to Florence

K-Mart	24,266
Theatre	14,904
Towne West	28,661
	67,831

Tracy, Kellogg to Taft

Towne West	195,747
------------	---------

Taft, Florence to West

Towne West	58,975
City	4,912
Total	63,887

Totals on Tracy and Taft

City	11,025
Towne West	468,520
Others	84,085
	563,630

Previous Cost Allocation

City	583,617
Spec. Asses. (others)	98,907
Towne West	1,368,437 to 1,400,000
State	443,000
	2,493,961
	2,525,524

Present Funds Committed for Tracy and Taft and Right-of-Way

City	11,025 + 142,469	153,494
Others		84,085
Towne West		468,520
		706,099



Balance of City Funds Available

583,617  
153,494  
 430,123

Balance of Towne West Funds Available

1,400,000  
468,520  
 931,480

Funds Available from City and Towne West

For Kellogg, West and Maple      430,123  
931,480  
 1,361,603

Cost of West, Kellogg and Maple

Kellogg                              277,538  
 West                                    419,717  
 Maple                                   920,731  
 1,618,036

Cost                                    1,618,036  
 Funds Available                    1,361,603  
 Shortage                              256,433  
 Signals                                171,000  
 Total Shortage                      427,433

Plus two (2) tracts of right-of-way and possibly \$40,000 for signals on Maple

Traffic Signals

<u>Intersection</u>	<u>T.W. Est.</u>	<u>T.E. Est.</u>
Kellogg and West	7,500	-0-
Kellogg and Tracy	40,000	40,000
West and Taft	2,000	38,000
West and Maple	62,000	45,000
School X-walk on Maple	500	8,000
* Maple and Tracy	40,000	-0-
* Maple and Anna	40,000	-0-
Tracy and Taft	<u>40,000</u>	<u>40,000</u>
	232,000	171,000

\* Signals will be needed at either the intersection of Maple and Anna or Maple and Tracy if the Maple I-235 Interchange is built. Estimated cost - \$40,000.

Right-of-Way

<u>Location</u>	<u>Towne West Est.</u>	<u>Eng. Div. Est.</u>
Maple, I-235 to McComas; West No. of Maple	29,695	142,469
Kellogg	-0-	-0-
West, South of Kellogg	5,129	-0-
West, Kellogg to Taft	33,882	-0-
Tracy, Kellogg to Taft	5,561	---
Taft, Tracy to West	9,350	-0-
West, North of Maple	-0-	---
	<u>83,617</u>	<u>142,469</u>

Note:

Two tracts have not been acquired. One is on Tracy and one is on West Street.

Right-of-way from the Theatre and the BOE has been acquired for the combined use of drainage and street purposes. These two tracts cost \$38,800.00 and are currently charged to the drainage account.

Since the approval of petitions which fund the paving of Taft and Tracy, the Theatre property has sold and the apparent use will be as a shopping center generating high traffic volume. It has been suggested that the funding of Tracy and Taft should be reconsidered where these streets abut the Theatre property.

In the recalculation of the division of costs for these streets it is assumed that since the K-Mart and Star properties have not changed land use nor propose to, their costs should remain substantially as originally agreed. It is assumed that the Theatre property should pay for half of the cost of widening Taft from West to Florence. It is assumed that the cost of paving Taft from Florence to Tracy should be paid half by the Theatre property, with K-Mart paying their originally proposed assessment and Towne West paying the remainder.

It is assumed that the remainder of the cost of paving Tracy from Taft to Maple, after deducting the originally proposed assessment to Star Lumber, should be paid 1/3 by the Theatre property and 2/3 by Towne West.

These assumptions and calculations result in an increase in assessments to the Theatre property of 95,380 and a reduction of assessments to the Towne West Property of 95,380.

<u>PROJECT</u>	<u>OWNER</u>	<u>PREVIOUS ALLOCATION</u>	<u>NEW COST ALLOCATION</u>	
Taft Florence to West	Towne West	58,975	29,488	-29,487
"	Theatre	0	29,487	+29,487
Taft Florence to Tracy	K-Mart	24,266	24,266	0
"	Theatre	14,904	33,910	+19,006
"	Towne West	28,661	9,655	-19,006
Tracy, Taft to Maple	Star	22,677	22,677	0
"	Theatre	22,238	69,125	+46,887
"	Towne West	185,137	138,250	-46,887

These figures are shown as a possible way of decreasing the shortage. The shortage, if this re-funding was considered appropriate, would be reduced from 427,433 to 332,053.

Following is the calculations for this approach.

Tracy, Taft to Maple  
 230,052                      To Be Assessed  
22,677                      Star  
 207,375

1/3 to Theatre              69,125

2/3 to Towne West        138,250

Towne West share before    185,137  
138,250  
 Savings to Towne West     46,887

Taft, Tracy to Florence  
 Cost 67,831  
 1/2 to Theatre              33,910  
 K-Mart                      24,266  
                                      58,176

Cost                            67,831  
 Others                        58,176  
 Towne West Share            9,655

Towne West share before    28,661  
9,655  
 Savings to Towne West     19,006

Taft, Florence to West  
 Cost (SA)                    58,975  
 1/2 to Theatre              29,487  
 1/2 to Towne West          29,488

Towne West share before    58,975  
29,488  
 Savings (TW)                29,487

Totals

46,887  
 19,006  
29,487  
 95,380

Summary

931,480    Previous Funds Av. from Towne West  
95,380    Savings to Towne West  
 1,026,860    Funds Av. from Towne West  
 430,123    Funds Av. from City  
1,456,983    Funds Available

Cost of Maple, West and U.S. 54

Cost                            1,618,036  
 Funds Av.                    1,456,983  
 Shortage                      161,053  
 Signals                        171,000  
 Total Sh.                      332,053



*Read  
File  
Johnie  
File*

July 5, 1979

Law/Kingdon P.A.  
Attention: J. Jones  
P.O. Box 1139  
Wichita, KS 67201

RE: S/D 79-60 Westport Addition

In preparing recommendations for the Board of City Commissioners as to initiating the street improvements in the Town West vicinity, the Department of Public Works has prepared the attached memorandum for submission to the City Commission. It is our understanding that this memorandum and the discussion of cost-distribution assessments would be before the City Commission on July 17, 1979.

As you are aware, when the Town West project was before the City Commission there were initial cost-distributions for the paving of Taft and Tracy Avenues. These were based on the drive-in-theatre continuing as a drive-in-theatre, and on the argument that it would not be contributing to the traffic on either Tracy or Taft. However, with the submission of the Preliminary Plat for Westport Addition, and the identification that this land will now be used for the development of a department store, it is apparent that the cost should be distributed in a more equitable fashion. It is proposed that the cost of paving Taft from Florence to Tracy should be paid half by the theatre property with K-Mart paying the originally proposed assessment and Town West picking up the remainder. It is also being recommended that the paving of Tracy from Taft to Maple, after deducting the originally proposed assessment to Star Lumber, should be paid one-third by the theatre property and two-thirds by Town West. These assumptions and calculations result in an increase of assessments (estimated), to the theatre property of \$95,380.

*BCC on 7-17-79 #332,053  
Split the cost of City and Dandger.  
50/50 between  
Westport addition was agreeable  
to their share of \$95,380 JJA*

Page 2  
July 5, 1979

I wish to bring this to your attention as your preliminary plat comes before the Subdivision Committee on July 12, 1979, and the question of project initiation and project cost-distribution before the City Commission on July 17, 1979. Should you have any questions as to the specific allocations and numbers involved in the cost-estimates, please contact Mr. Dick Linn, City Engineer. If there is any other information that we can provide please call.

Sincerely,

Robert A. Lakin  
Director of Planning

RAL:vn

cc: ✓ Campbell & Castle, P.A. Engineers  
Westport Theatres, Inc., Phil Frick Attorney  
✓ Mike Weigand  
Tom Bonneville, 777 Nichollet Mall, Minneapolis, MN 55402  
✓ L. H. Denton, City Manager, City of Wichita  
✓ Ray Druggeman, Director of Public Works, City of Wichita  
✓ Dick Linn, City Engineer, City of Wichita

Attachment

Blind copy to ✓ Jim Schaefer, Attorney  
✓ B. J. Kingdon, Law Company  
Copy to ✓ Westport File and ✓ Town West File

MELLOR, SCHAEFER & MILLER, P. A.  
ATTORNEYS AT LAW

PHILLIP MELLOR  
JAMES R. SCHAEFER  
ARDEN P. MILLER  
KIM A. ROBERTS

800 BROWN BUILDING  
WICHITA, KANSAS 67202  
TELEPHONE (316) 262-4403

R. L. HOLMES (1860-1929)  
W. E. HOLMES (1887-1954)  
JOHN J. DARRAH (1910-1973)  
GEORGE R. COMPTON (1941-1972)

April 27, 1979

WILBUR H. JONES  
DOUNBEL



Mr. Curtis Newby  
Wichita-Sedgwick County Metropolitan  
Planning Department  
City Building  
455 North Main  
Wichita, Kansas 67202

Dear Curt:

Re: Towne West

I am enclosing herewith a copy of the contingent dedication which I apparently neglected to mail to Louise previously.

Very truly yours,

*Jim*  
James R. Schaefer, of  
MELLOR, SCHAEFER & MILLER, P. A.

jrs/f  
Enc.



FILM 359 NO. 1047

CONTINGENT DEDICATION

The undersigned, being the owner of the following described real estate, to-wit:

A tract in the Northwest Quarter (NW/4) of Section 26, Township 27 South, Range 1 West of the Sixth Principal Meridian described as follows:

Commencing at the Northeast corner of said Northwest Quarter; thence 80.00 feet on a bearing of South 00°11'32" to the South line of Maple Street; thence 1394.76 feet on a bearing of South 89°48'05" West along said South line of Maple Street to the point of beginning; thence 157.46 feet on a bearing of 89°48'05" West along said South line of Maple Street to the Easterly right of way line of I-235 Highway; thence 575.00 feet on a bearing of South 33°44'17" East along said Easterly right of way line; thence 230.87 feet on a bearing of North 16°05'15" West; thence 254.43 feet on a bearing of 26°56'26" West; thence 34.71 feet on a bearing of North 30°00'00" East to the point of beginning.

hereby dedicates said real estate to the public for road purposes, provided, however, said dedication is contingent upon the occurrence of each of the following events:

- (a) That US Highway 54 (Kellogg Street) from West Street in the City of Wichita to the I-235 interchange at Kellogg is improved to freeway standards; and
- (b) That an urban type interchange designed substantially as shown on the attached Exhibit "A" is constructed at the intersection of West Street and Kellogg Street; and
- (c) That a frontage road is constructed on the north side of Kellogg Street to connect West Street and said Kellogg Street - West Street Interchange to the Towne West Square Shopping Mall; and
- (d) That an interchange is built at I-235 and Maple Street within the City of Wichita.

Dated the 9<sup>th</sup> day of April, 1979.

TOWNE WEST MALL COMPANY,  
a limited partnership

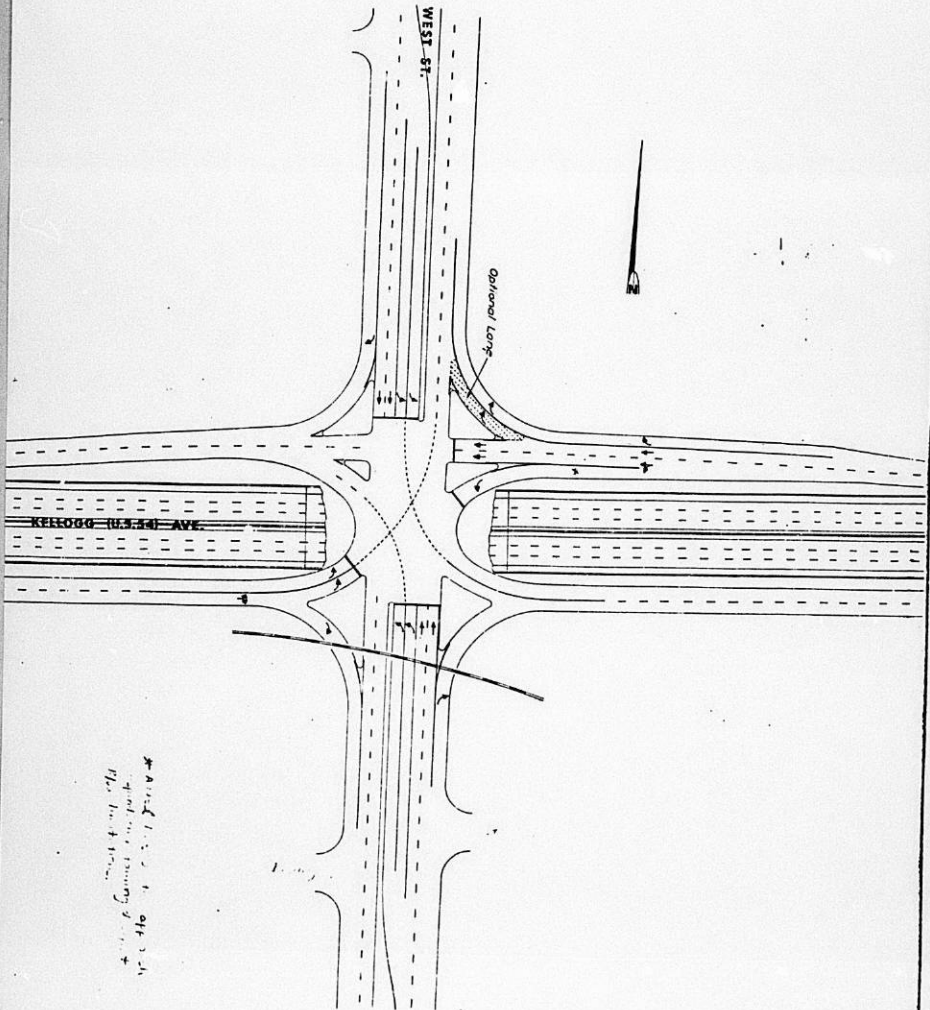
By [Signature]  
Melvin Simel General Partner

STATE OF KANSAS  
RECORDED  
APR 17 1979

4 34600  
WALTER F. McCARTY  
COUNTY CLERK

*Pat Kettle  
Deputy*

7.00 LHC



\* Aerial Photo of 4/12/54  
 used in planning of this  
 plan.

DATE	DESCRIPTION

**PRELIMINARY  
 PLANS**  
 FOR THE  
 PROPOSED  
 MODIFIED URBAN INTERSECTION  
 AT A CORNER OF

U.S. 54 & WEST ST.  
 WICHITA, SEDGWICK

PROJECT NO.	
DATE	

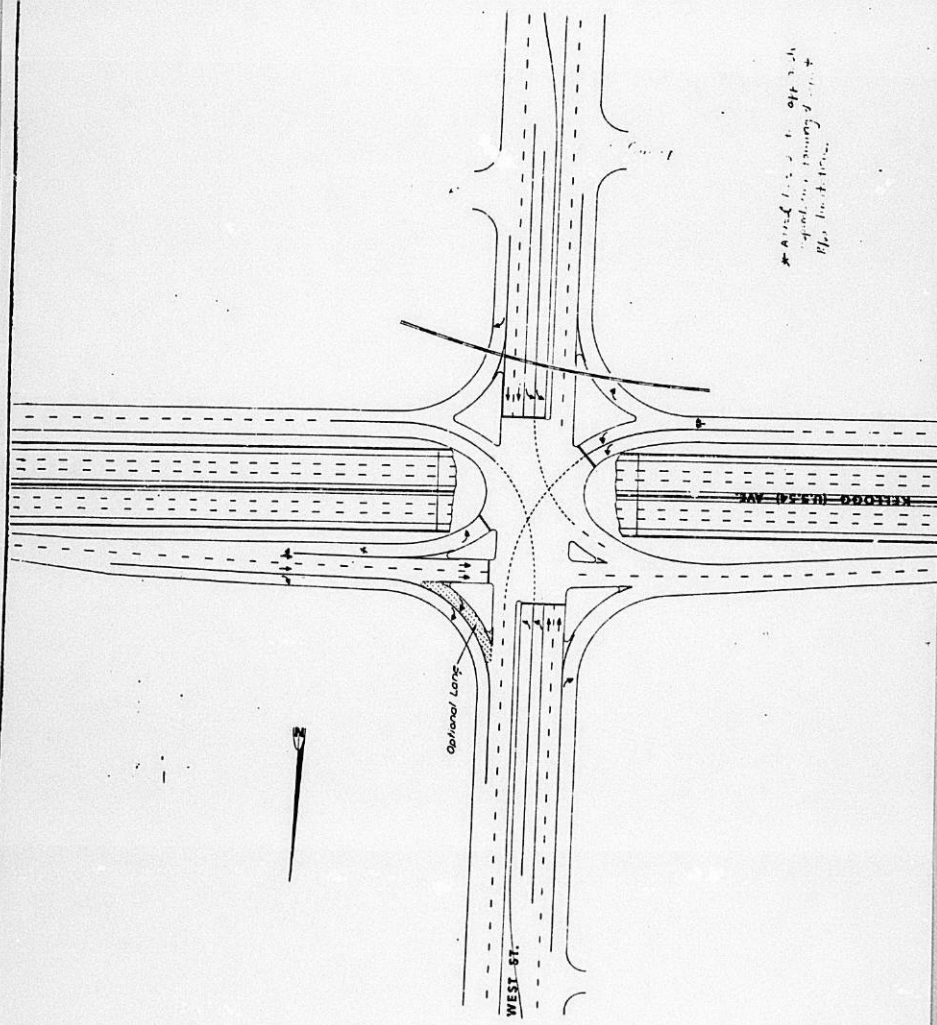
DATE	PROJECT	SCALE

**PRELIMINARY  
PLANS**  
FOR  
CONSTRUCTION OF  
FIVE LANE WEST SIDE  
AT ALLEN ST.

NO.	DATE	BY	REVISION

ROADS DEPARTMENT  
U.S. 54 & WEST ST.  
MODIFIED URDAN INTERCHANGE  
WICHITA, SEDGWICK CO.

\* Area 1.5 x 1.0 off 3.0 ft  
\* 1.0 ft x 1.0 ft  
\* 1.0 ft x 1.0 ft





*Louise*

MELLOR, SCHAEFER & MILLER, P. A.  
ATTORNEYS AT LAW

800 BROWN BUILDING  
WICHITA, KANSAS 67202  
TELEPHONE (316) 262-4403

R. L. HOLMES (1880-1929)  
W. E. HOLMES (1887-1958)  
JOHN J. DARRAH (1910-1973)  
GEORGE R. COMPTON (1941-1974)

PHILLIP MELLOR  
JAMES R. SCHAEFER  
ARDEN P. MILLER  
KIM A. ROBERTS

WILBUR H. JONES  
COUNSEL

April 17, 1979

Mrs. Louise Olivarez  
Planning Department  
City Building  
455 North Main  
Wichita, Kansas 67202



Dear Louise:

Re: Towne West Plat

For your file I am enclosing herewith a copy of the Towne West Mall Company covenant relative to the Towne West ring road and also a copy of Article 24, Part 3, of the Reciprocal Easement Agreement.

Both of these documents reflect the filing data thereof.

Very truly yours,

*James R. Schaefer*  
James R. Schaefer, of  
MELLOR, SCHAEFER & MILLER, P.A.

jrs/f  
Enc.

*Contingent Street Dedication*

*Film 359 Page 1047*

*DOCUMENT # 4 34600*

April 3, 1979

STATE OF KANSAS  
SEDGWICK COUNTY  
FILED FOR RECORD AT  
APR 17 1979  
NO. 4 34606  
BETTE F. MCCART  
REGISTER OF DEEDS

*Pat Mitchell  
Signatory*

The Honorable Board of City Commissioners  
City Hall  
455 North Main  
Wichita, KS 67202

Re: Towne West Square Second Addition,  
Wichita, Sedgwick County, Kansas

Gentlemen:

As consideration for your approval of the final plat of Towne West Square Second Addition (the "Plat"), the undersigned will not enter into any amendment or revision of Article 24 of that certain CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT ("Operating Agreement"), a copy of which Operating Agreement has heretofore been received by the Planning Department and is recorded in Film 359 Page 1063, in the Office of the Register of Deeds, Sedgwick County, Kansas, which would have the effect of denying to or terminating the access and use of the so-called Ring Road by any Lot delineated on the Plat which is granted the use of the same under Article 24 of the Operating Agreement, without the simultaneous granting of an equivalent means of access to said Lot; PROVIDED, HOWEVER, that nothing contained herein shall limit or be deemed to limit the undersigned's right to enter into any amendment of the Operating Agreement, or Article 24 thereof, which relocates, amends or revises the so-called Ring Road but does not terminate or deny access.

This covenant shall remain in full force and effect during the term of the Operating Agreement and shall be binding on the undersigned, its successors and assigns.

Dated this 9th day of April, 1979.

TOWNE WEST MALL COMPANY, an Indiana  
limited partnership

By *[Signature]*, General Partner  
Melvin Chasen

②  
600 LTIC







23.5 Any reference in this Operating Agreement to the Department Store Operating Periods or operating covenants shall refer only to the periods during which each of the Department Stores are required to operate under the first sentence of each of Paragraphs 23.1, 23.2, 23.3 and 23.4.

23.6 Nothing herein contained shall be deemed to regulate in any way the manner of operating of the business being conducted by each Department Store or the hours or days of such operation.

23.7 The provisions of this Article shall be subject to all the provisions of this Operating Agreement, including, without limitation, the provisions of "General Article 28 Force Majeure", "General Article 29 Eminent Domain", "Operation Article 11 Temporary Cessation of Business", and "Operation Article 21 Improvements Destruction".

23.8 The Parties acknowledge that damages for the breach of any of the operating covenants contained in this Article 23 may be difficult to ascertain. Accordingly, Developer shall be entitled not only to damages but also to injunctive relief to enforce the foregoing operating covenants against each Department Store and to restrain and enjoin a breach or threatened breach thereof.

### P A R T T H R E E

#### Reciprocal Easements

#### Article 24 Ingress and Egress

##### Paragraph

24.1 Developer hereby grants to each Department Store for the use of each said Department Store and all its Permittees, in common with each other Party and its Permittees, and each said Department Store hereby grants to Developer and each other Department Store for the use of Developer and each Department Store and all their respective Permittees, in common with each other Party and its Permittees (and in common with any and all other persons, from time to time, lawfully entitled to use the same) mutual, non-exclusive and reciprocal easements in, to and over the Common Area and the Enclosed Mall located upon the Developer Tract and the Future Department Store Tract and the Common Area located upon each Department Store Tract, respectively, for the use and enjoyment of the various common facilities for their intended purposes, as shown on the Plot Plan. Such easements shall be, without limiting the generality of the foregoing sentence, for access and ingress and egress to, from and among all Tracts of all Parties to this Operating Agreement (i.e., the Total Development Tract) and to and from the public streets and highways abutting the Total Development Tract as shown on the plot plan, for the parking of vehicles and the passage of vehicular and pedestrian traffic upon the Common Area and among all such Tracts (including, without limitation, reasonable access between the Shopping Center Tract and each of the Reserve Tracts, consistent with good traffic control and subject to the provisions of Paragraph 4.1(4) of this Operating Agreement), pedestrian traffic in the Enclosed Mall, and for the doing of such other things as are authorized or required to be done upon or within the Common Area and the Enclosed Mall, and for the doing of such other things as are authorized or required to be done upon or within the Common Area and the Enclosed Mall pursuant to this Operating Agreement and as shown on the Plot Plan. It is understood and agreed that all such easements created and provided for hereunder shall be appurtenant to all such Tracts, including both the

Shopping Center Tract and all component Tracts thereof and the Reserve Tracts, and likewise shall be a servitude upon all such Tracts. A major public entrance to each level of each Department Store Building from each level of the Enclosed Mall, to permit pedestrian traffic to, from and between each such Department Store Building and the Enclosed Mall, shall be maintained by each such Department Store at all times during the Term of this Operating Agreement.

24.2 The easements granted in Paragraph 24.1 of this Operating Agreement shall terminate upon the termination of this Operating Agreement, except that the easements for vehicular and pedestrian traffic over, upon and across those strips of land which constitute the ring road and access roads, shown shaded on the Plot Plan, Exhibit "A", (hereinafter referred to collectively as the "Ring Road") shall remain and continue in full force and effect throughout the Term of this Operating Agreement, including any renewals or extensions thereof and thereafter so long as any of the Buildings, or any replacements thereof, on the Shopping Center Tract shall stand; provided, however, the grantors of such easements reserve the right at any time and from time to time after the expiration of the Term of this Operating Agreement to change the location of all or any portion of the Ring Road located on their respective Tracts, provided that (i) such relocation shall be made at the sole cost and expense of the grantor, (ii) the use of the Ring Road for pedestrian and vehicular traffic is not unreasonably restricted or materially impaired by such relocation, (iii) the quality of construction and the width of the relocated Ring Road shall be substantially similar to the portion being relocated, and (iv) the relocation shall be carried out in such manner as to cause the least possible interference with the use of the Ring Road; and provided, further, that after the expiration of the Term of this Operating Agreement the grantors shall have no obligation to maintain or repair the Ring Road on their respective Tracts and any grantee shall have the right to enter upon the Tract of the grantor for the purpose of maintaining and repairing the Ring Road at such grantee's sole cost and expense, and that any grantee entering upon the Tract of a grantor to effect such maintenance and repair shall defend and save harmless the grantor from all loss, liability, cost and expense incurred in connection with the grantee's exercise of such right. At the request of any Party to this Operating Agreement, the Parties shall execute a written agreement more particularly identifying and describing the aforesaid Ring Road easement by metes and bounds.

24.3 In the event the whole, or any part, of the Common Area or the Enclosed Mall upon any of the Tracts shall be taken for any public or quasi-public use under any governmental law, ordinance, or regulation, or by right of Eminent Domain, or by private purchase in lieu thereof, then, and in any such event, the grantee of the easements granted in Paragraph 24.1 of this Article shall not share in any award, compensation or other payment received by the grantor for such taking as to that portion of the land so taken which is subject to said easements, and such award, compensation or other payment shall belong solely and entirely to such grantor, and such grantor shall have no further liability to the other Parties hereunder for the loss of such easements, or portion thereof, located upon the land so taken; however, each grantee shall have the right to pursue its own award against the condemnor for the taking of such easements.



24.4 Each Party hereby further grants to each other Party, subject to the conditions contained in this Article, the non-exclusive right to use (and easements in, to, over, under and across) the Common Area and the Enclosed Mall for the purpose of performing maintenance of any Common Area Improvements pursuant to the provisions of this Operating Agreement.

24.5 The Developer shall promulgate rules and regulations with respect to the use of the Common Areas which shall be acceptable to the Department Stores.

Reciprocal Easements

Article 25 Utilities

Paragraph

25.1 Developer hereby grants to each Department Store for its use in common with Developer, mutual, non-exclusive and reciprocal easements in, to, over and under the Common Area located upon the Developer's Tract and the Future Department Store Tract, and in, to, over and under any portion of the Reserve Tracts which is outside of the Permissible Building Area on the Reserve Tracts, for the installation, operation, maintenance and repair of sewers, (including underground storm sewers for the drainage of roof and surface waters from each said Department Store Tract) water mains, gas mains, electric power lines, telephone lines and all other Common Utility Facilities (all of which shall be underground) serving the Common Area and the Improvements located in the Shopping Center, all of which shall be located and installed as shown in the utility plan which constitutes a part of the Plans and Specifications; provided, however, that in the use of the said easements, each said Department Store shall not unreasonably interfere with the use of the Developer's Tract or the Future Department Store Tract or any Reserve Tract, and said easements shall be subject to relocation as hereinafter provided. Such easements shall remain and continue in full force and effect throughout the Term of this Operating Agreement, including any renewals or extensions thereof, and thereafter so long as any of the Buildings served thereby, or any replacements thereof, on the Total Development Tract shall stand, subject to the terms of Paragraph 25.3 of this Operating Agreement.



## WICHITA-SEDGWICK COUNTY

DATE

April 17, 1979

## METROPOLITAN AREA PLANNING DEPARTMENT

TO S/D 79-7 File - Towne West Square Second Addition

FROM Louise Olivarez, Junior Planner

SUBJECT Recommended changes on plat tracing.

After reviewing the plat tracing which was submitted on March 23, 1979, the engineer, Max Hubbell of Campbell and Castle, was notified of the following requested corrections or additions:

1. Add statement to plattor's text about what Reserve "A" is for ("landscaping, pylon sign and paving" according to C.U.P.);
2. Correct the access control reference in plattor's text to correspond to the notations on face of plat (i.e., Lots 2, 4, 10 and 11 shall have access to Maple Street "at a total of 4 locations" NOT "at one location each";)
3. Add recorded data for contingent dedication and for the reciprocal ring road agreement.
4. Furnish proof that Melvin Simon can sign on behalf of Towne West Mall Company.

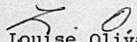
Jim Schaefer, attorney, agreed to item 1 and first part of item 3, but refused to comply with items 2,4, or second half of 3. He said there was absolutely no need for item 4 because a partnership automatically allows one partner to act on behalf of the partnership. He also would not agree to make the access control corrections, saying that the tracing had already been signed and many people had been given copies already. (However, it is noted that he did agree to add the sentence about Reserve A.). Schaefer agreed to add the recorded data for the contingent street dedication, but said there was no need for any reference to the reciprocal easement agreement (which grants each lot access to the public streets across other lots). I said that a number of lots are landlocked and I thought that the face of the plat should reference the recorded agreement which provides access to and from these lots.

On April 12, 1979, Bob Lakin indicated that it would be alright to release the plat for recording without requiring the access control changes in the plattor's text and without requiring the film and page number of the reciprocal easement agreement to be shown on the face of the plat.

On April 17, 1979, the plat tracing was released to Jim Schaefer for recording. The contingent street dedication, the reciprocal easement agreement and the letter requested by the City Legal Department pertaining to the potential amendment of Article 24 of the

S/D 79-7 - File - Towne West Square Second Addition  
Page 2  
4-17-79

reciprocal easement agreement, are to be recorded; the recorded data for the contingent dedication added to the plat tracing; the plat tracing recorded; and copies of the recorded contingent dedication, letter and Article 24 of the reciprocal agreement furnished to Metropolitan Area Planning Department.

  
Louise Olivarez  
Junior Planner

LO:bh

April 3, 1979

The Honorable Board of City Commissioners  
City Hall  
455 North Main  
Wichita, KS 67202

Re: Towne West Square Second Addition,  
Wichita, Sedgwick County, Kansas

Gentlemen:

As consideration for your approval of the Final plat of Towne West Square Second Addition (the "Plat"), the undersigned will not enter into any amendment or revision of Article 24 of that certain CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT ("Operating Agreement"), a copy of which Operating Agreement has heretofore been received by the Planning Department and is recorded in \_\_\_\_\_, in the Office of the Register of Deeds, Sedgwick County, Kansas, which would have the effect of denying to or terminating the access and use of the so-called Ring Road by any Lot delineated on the Plat which is granted the use of the same under Article 24 of the Operating Agreement, without the simultaneous granting of an equivalent means of access to said Lot; PROVIDED, HOWEVER, that nothing contained herein shall limit or be deemed to limit the undersigned's right to enter into any amendment of the Operating Agreement, or Article 24 thereof, which relocates, amends or revises the so-called Ring Road but does not terminate or deny access.

This covenant shall remain in full force and effect during the term of the Operating Agreement and shall be binding on the undersigned, its successors and assigns.

Dated this 9<sup>th</sup> day of April, 1979.

TOWNE WEST MALL COMPANY, an Indiana  
limited partnership

  
Malcolm C. \_\_\_\_\_, General Partner

Received by MAPD 4-16-79 4:45 PM (from [unclear] title)





CONTINGENT DEDICATION

The undersigned, being the owner of the following described real estate, to-wit:

A tract in the Northwest Quarter (NW/4) of Section 26, Township 27 South, Range 1 West of the Sixth Principal Meridian described as follows:

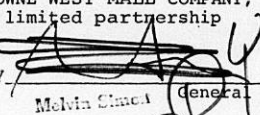
Commencing at the Northeast corner of said Northwest Quarter; thence 80.00 feet on a bearing of South 00°11'32" to the South line of Maple Street; thence 1394.76 feet on a bearing of South 89°48'05" West along said South line of Maple Street to the point of beginning; thence 157.46 feet on a bearing of 89°48'05" West along said South line of Maple Street to the Easterly right of way line of I-235 Highway; thence 575.00 feet on a bearing of South 33°44'17" East along said Easterly right of way line; thence 230.87 feet on a bearing of North 16°05'15" West; thence 254.43 feet on a bearing of 26°56'26" West; thence 34.71 feet on a bearing of North 30°00'00" East to the point of beginning.

hereby dedicates said real estate to the public for road purposes, provided, however, said dedication is contingent upon the occurrence of each of the following events:

- (a) That US Highway 54 (Kellogg Street) from West Street in the City of Wichita to the I-235 interchange at Kellogg is improved to freeway standards; and
- (b) That an urban type interchange designed substantially as shown on the attached Exhibit "A" is constructed at the intersection of West Street and Kellogg Street; and
- (c) That a frontage road is constructed on the north side of Kellogg Street to connect West Street and said Kellogg Street - West Street interchange to the Towne West Square Shopping Mall; and
- (d) That an interchange is built at I-235 and Maple Street within the City of Wichita.

Dated the 9<sup>th</sup> day of April, 1979.

TOWNE WEST MALL COMPANY,  
a limited partnership

By   
Melvin Elmer (General Partner)

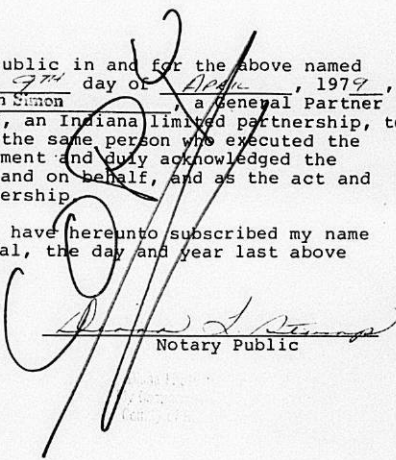
Received by MAPD 4-16-79 4:45 PM (from Lawyer's Office)



STATE OF INDIANA )  
                          ) SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for the above named County and State, on this 7<sup>th</sup> day of April, 1979, personally appeared Melvin Simon, a General Partner in TOWNE WEST MALL COMPANY, an Indiana limited partnership, to me personally known to be the same person who executed the above and foregoing instrument and duly acknowledged the execution of the same for and on behalf, and as the act and deed of said limited partnership.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my Official Seal, the day and year last above written.



Notary Public

My Commission Expires:

My County of Residence:



Scale: 1" = 100'

PRELIMINARY  
PLANS  
FOR  
CONSTRUCTION OF  
IMPROVED  
AT & WEST ST.

U.S. GOVERNMENT PRINTING OFFICE  
U.S. 54 & WEST ST.  
MODIFIED URBAN INTERCHANGE  
WICHITA, SEDGWICK CO.

Revised 11.15.41  
Special Engineering Division  
Wichita, Kan.

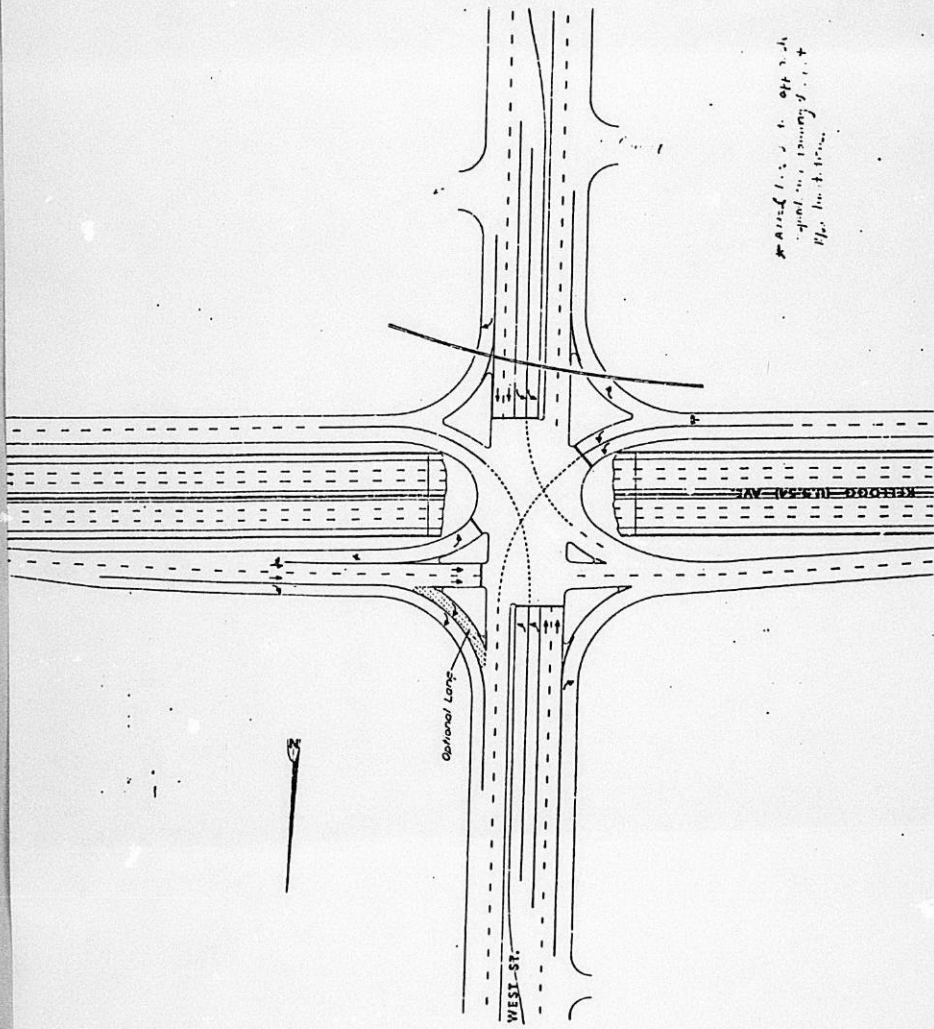


EXHIBIT "A"

March 22, 1979

The Honorable Board of City Commissioners  
City Hall  
455 North Main  
Wichita, KS 67202

Re: Towne West Square Second Addition,  
Wichita, Sedgwick County, Kansas

Gentlemen:

<sup>As</sup> ~~In connection with your consideration of the final plat of the Towne West Square Second Addition (the "Plat"), and the consideration of the same by the Wichita Sedgwick County Metropolitan Area Planning Department, ("Planning Department"), please be advised of the covenant of the undersigned, Towne West Mall Company, an Indiana limited partnership, and the entity which will retain the fee title ownership of Lot Number 1 as shown on the Plat.~~ <sup>by your approval</sup>

<sup>As consideration for your approval of the final plat of TWSSA (L.P. #12)</sup>  
~~It is the covenant of the undersigned that it will not enter into any amendment or revision of Article 24 of that certain CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT ("Operating Agreement"), a copy of which Operating Agreement has heretofore been received by the Planning Department and is recorded in \_\_\_\_\_, in the Office of the Register of Deeds, Sedgwick County, Kansas, which would have the effect of denying to or terminating the access and use of the so-called Ring Road by any Lot delineated on the Plat which is granted the use of the same under Article 24 of the Operating Agreement, without the simultaneous granting of an equivalent means of access to said Lot; PROVIDED, HOWEVER, that nothing contained herein shall limit or be deemed to limit the undersigned's right to enter into any amendment of the Operating Agreement, or Article 24 thereof, which relocates, amends or revises the so-called Ring Road but does not terminate or deny access.~~

This covenant shall remain in full force and effect during the term of the Operating Agreement and shall be binding on the undersigned, its successors and assigns.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 1979.

TOWNE WEST MALL COMPANY, an Indiana  
limited partnership

By \_\_\_\_\_,  
General Partner

*Agreed to by E. Shaw  
+ T. Powell -  
4-3-79  
[Signature]*

STATE OF INDIANA )  
                  )SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for the above named County and State,  
on this \_\_\_\_\_ day of \_\_\_\_\_, 1979, personally appeared \_\_\_\_\_  
\_\_\_\_\_, a General Partner in TOWNE WEST MALL COMPANY, an Indiana  
limited partnership, to me personally known to be the same person who executed  
the above and foregoing instrument and duly acknowledged the execution of the  
same for and on behalf, and as the act and deed of said limited partnership.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my  
official seal, the day and year last above written.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

My County of residence is:

\_\_\_\_\_



THE CITY OF WICHITA

OFFICE OF Public Works Engineering

DATE April 2, 1979

TO E. H. Denton, City Manager

FROM R. W. Linn, City Engineer


SUBJECT Towne West Street Improvements

On July 27, 1976 the City Commission approved funding for Towne West street improvements. This funding was based on cost estimates prepared and submitted by the developer. The condition of approval was subject to "State funding participation in the amount of \$443,000.00 and further subject to the accuracy of the street improvement cost estimates as prepared by the developer with the stipulation that in the event cost estimates and/or state participation are not as estimated, that the scope of the intended improvements be re-submitted to the City Commission for further review.

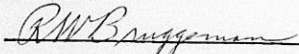
The Engineering Division and Traffic Engineering Division have prepared final and preliminary plans and updated cost estimates for these improvements. Some right-of-way has been acquired. Some factors affecting cost changes are: inflation, downgrading the Kellogg improvement, lengthening the West Street improvement, and increase right-of-way costs. The new cost estimates indicate a shortage in the funding of about \$356,000.00. Calculations to show how these figures were arrived at are attached.

You may wish this information presented to the Commission as they are considering the Towne West Square Second Addition scheduled for April 3, 1979.

We will be available to respond to questions.

  
R. W. Linn  
City Engineer

APPROVAL:



R. W. Bruggeman  
Director of Public Works

RWL:ck

cc: Robert Lakin ✓  
Paul Graves  
Jim Schafer

Street Improvements (includes signals).

Towne West Est. (1976)		Engineering Division Est. (1979)
US - 54	1,092,483	268,752
Maple	570,826	923,354
West	301,134	512,807
Tracy	340,542	419,975
Taft	<u>105,359</u>	<u>151,819</u>
Const. Cost	2,410,344	2,276,707
Right-of-Way	<u>83,617</u>	<u>142,469</u>
Total	2,493,961	2,419,176

Breakdown of costs on:

Tracy, Taft to Maple

Star	22,219
Theatre	21,789
Towne West	<u>181,398</u>
	225,406
City	<u>5,703</u>
	231,109

Taft, Tracy to Florence

K-Mart	22,028
Theatre	13,529
Towne West	<u>26,018</u>
	61,575

Tracy, Kellogg to Taft

Towne West	188,866
------------	---------

Taft, Florence to West

Towne West	84,526
City	<u>5,718</u>
Total	90,244

Totals on Tracy & Taft

City	11,421
Towne West	480,808
Others	<u>79,565</u>
	571,794

Previous Cost Allocation

City	583,617
Spec. Asses. (others)	98,907
Towne West	1,368,437 to 1,400,00
State	<u>443,000</u>
	2,493,961

Present Funds Committed for Tracy & Taft & Right-Of-Way

City	11,421 + 142,469	153,890
Others		79,565
Towne West		480,808
		<u>714,263</u>

Balance of City Funds Available

583,617
<u>153,890</u>
429,727

Balance of Towne West Funds Available

1,400,000
<u>480,808</u>
919,192

Funds Available From City & Towne West

For Kellogg, West & Maple	429,727
	<u>919,192</u>
	1,348,919

Cost of West, Kellogg & Maple

Kellogg	268,752
West	512,807
Maple	<u>923,354</u>
	1,704,913

Shortage	1,704,913
	<u>1,348,919</u>
	355,994

Plus 3 tracts of right-of-way and possibly \$40,000 for signals on Maple

Traffic Signals

Intersection	T.W. Est.	T.E. Est.
Kellogg & West	7,500	45,000
Kellogg & Tracy	40,000	40,000
West & Taft	2,000	38,000
West & Maple	62,000	45,000
School x-walk on Maple	500	8,000
* Maple & Tracy	40,000	-0-
* Maple & Anna	40,000	-0-
Tracy & Taft	<u>40,000</u>	<u>40,000</u>
	232,000	216,000

\* Signals will be needed at either the intersection of Maple & Anna or Maple & Tracy if the Maple I-235 Interchange is built. Estimated cost - \$40,000.00.



Right-Of-Way

Location	Towne West Est.	Eng. Div. Est.
Maple, I-235 to McComas; West No. of Maple	29,695	142,469
Kellogg	-0-	-0-
West, So. of Kellogg	5,129	-0-
West, Kellogg to Maple	33,882	-0-
Tracy, Kellogg to Taft	5,561	---
Taft, Tracy to West	9,350	-0-
West, No. of Maple	-0-	---
	<u>83,617</u>	<u>142,469</u>

Note:

Three tracts have not been acquired. One belongs to the State D.O.T. and may be dedicated. One of the other two is on Tracy and one is on West Street.

Right-of-way from the Theatre and the BOE has been acquired for the combined use of drainage and street purposes. These two tracts cost \$38,800.00 and are currently charged to the drainage account.

Contingent Read Dedication

See Film \_\_\_\_\_, page \_\_\_\_\_, Document No. \_\_\_\_\_

Office of Sedgwick County Register of Deeds, for dedicatory  
language.

CONTINGENT DEDICATION

The undersigned, being the owner of the following described real estate, to-wit:

A tract in the Northwest Quarter (NW/4) of Section 26, Township 27 South, Range 1 West of the Sixth Principal Meridian described as follows:

Commencing at the Northeast corner of said Northwest Quarter; thence 80.00 feet on a bearing of South 00°11'32" to the South line of Maple Street; thence 1394.76 feet on a bearing of South 89°48'05" West along said South line of Maple Street to the point of beginning; thence 157.46 feet on a bearing of 89°48'05" West along said South line of Maple Street to the Easterly right of way line of I-235 Highway; thence 575.00 feet on a bearing of South 33°44'17" East along said Easterly right of way line; thence 230.87 feet on a bearing of North 16°05'15" West; thence 254.43 feet on a bearing of 26°56'26" West; thence 34.71 feet on a bearing of North 30°00'00" East to the point of beginning.

hereby dedicates said real estate to the public for road purposes, provided, however, said dedication is contingent upon the occurrence of each of the following events:

- (a) That US Highway 54 (Kellogg Street) from West Street in the City of Wichita to the I-235 interchange at Kellogg is improved to freeway standards; and
- (b) That an urban type interchange designed substantially as shown on the attached Exhibit "A" is constructed at the intersection of West Street and Kellogg Street; and
- (c) That a frontage road is constructed on the north side of Kellogg Street to connect West Street and said Kellogg Street - West Street interchange to the Towne West Square Shopping Mall; and
- (d) That an interchange is built at I-235 and Maple Street within the City of Wichita.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 1979.

TOWNE WEST MALL COMPANY,  
a limited partnership

By \_\_\_\_\_  
General Partner

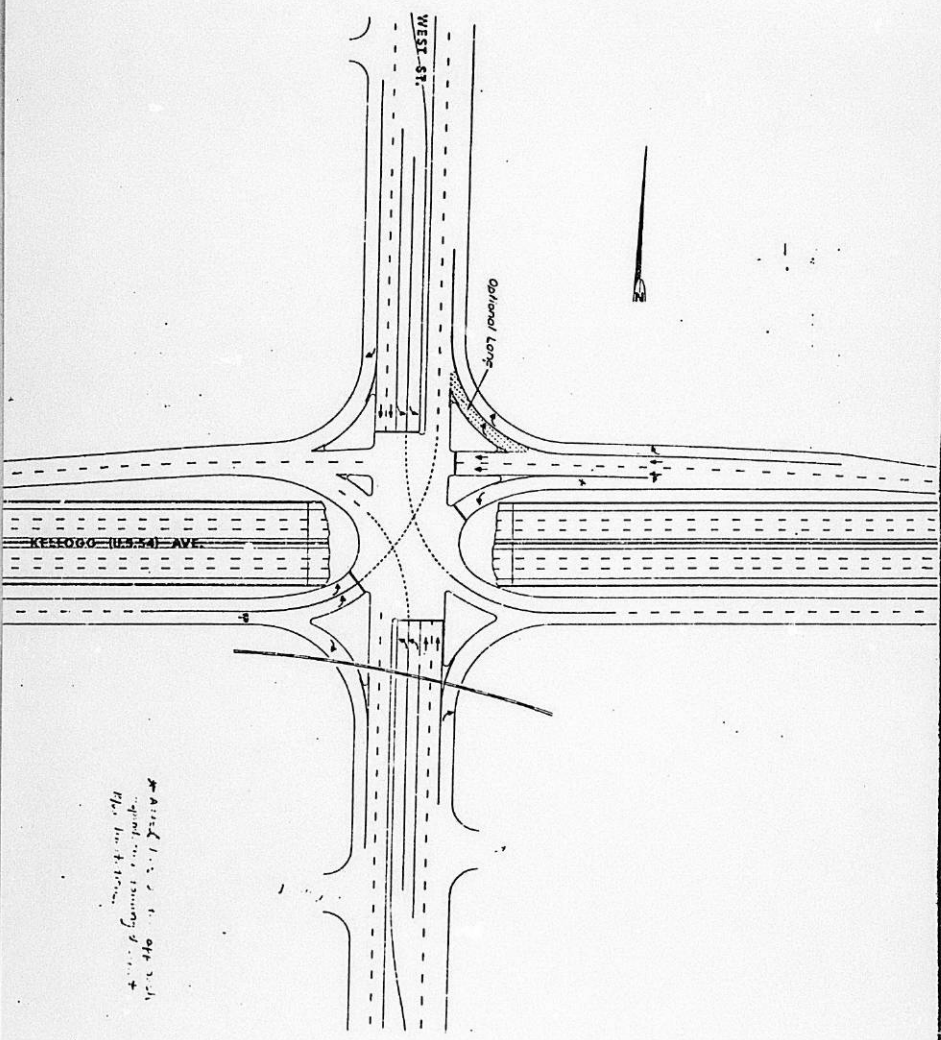
STATE OF INDIANA )  
                          ) ss:  
COUNTY OF MARION )

Acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
1979.

\_\_\_\_\_  
Notary Public

My Appointment Expires:  
\_\_\_\_\_





*As noted on sheet 2 of 4  
 regarding turning of traffic  
 from Kellogg Ave.*

DATE	DESCRIPTION

**PRELIMINARY  
 PLANS**  
 FOR STATE OF OKLAHOMA  
 ROAD AND BRIDGE DEPARTMENT  
 AT WICHITA, OKLA.

**U.S. 54 AT WEST ST  
 MODIFIED URBAN INTERCHANGE  
 WICHITA, SEDGWICK CO.**

"Exhibit A"

PROJECT NO.	
DATE	

from: M. Funk date 3-1-79

admin. adv. plans cur. plans social graphics

- |                                    |  |                                   |                                    |                                   |
|------------------------------------|--|-----------------------------------|------------------------------------|-----------------------------------|
| <input type="checkbox"/> walter    | <input checked="" type="checkbox"/> funk | <input type="checkbox"/> lytle    | <input type="checkbox"/> mitchell  | <input type="checkbox"/> pierce   |
| <input type="checkbox"/> eubanks   | <input type="checkbox"/> shen            | <input type="checkbox"/> young    | <input type="checkbox"/> kohl      | <input type="checkbox"/> stafford |
| <input type="checkbox"/> hanson    | <input type="checkbox"/>                 | <input type="checkbox"/> meek     | <input type="checkbox"/> hart      | <input type="checkbox"/> garland  |
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| <input type="checkbox"/> henderson | <input type="checkbox"/> curican         | <input type="checkbox"/> dobson   | <input type="checkbox"/>           | <input type="checkbox"/> crook    |
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| <input type="checkbox"/>           | <input type="checkbox"/>                 | <input type="checkbox"/>          | <input type="checkbox"/> schroeder | <input type="checkbox"/> martinez |
| <input type="checkbox"/>           | <input type="checkbox"/>                 | <input type="checkbox"/>          | <input type="checkbox"/> jones     | <input type="checkbox"/> miller   |
| <input type="checkbox"/>           | <input type="checkbox"/>                 | <input type="checkbox"/>          | <input type="checkbox"/> king      | <input type="checkbox"/> johns    |
| <input type="checkbox"/>           | <input type="checkbox"/>                 | <input type="checkbox"/>          | <input type="checkbox"/>           | <input type="checkbox"/> sansing  |

*Put a copy in Towne West Square*

- |  |  |
|--|--|
| <input type="radio"/> note & return      | <input type="radio"/> signature              |
| <input type="radio"/> handle             | <input type="radio"/> library                |
| <input type="radio"/> all staff          | <input checked="" type="radio"/> information |
| <input checked="" type="radio"/> comment | <input type="radio"/> files                  |

remarks:

*Can you recall anything not mentioned by Bill?*

*Prepared by  
Bill McKinley 2-28-79*

TP-105

SUMMARY OF EVENTS ON TOWNE WEST SQUARE

July 1974 "Site Traffic Analysis for a Proposed Regional Shopping Center" - Barton-Aschman. Contained within that report was the main entrance on Kellogg at Tracy. Kellogg was to be a six-lane facility with double left turns into the center. Tracy was to be a four-lane facility with left turns out of the center. A slip-off ramp from Kellogg to Kellogg Drive west of West Street was also envisioned. The Traffic Engineering Division had several questions and doubted this proposed traffic solution would meeting the needs of the center and the surrounding traffic.

February 12, 1975 Memo to James Schaefer from Jack H. Galbraith re: Towne West Square. Quoting from that memo, "The transportation element of the adopted Master Plan of the Wichita-Sedgwick County Metropolitan Area proposes U. S. 54 (Kellogg) to be a controlled access freeway with a proposed interchange at West and U. S. 54." ".....The Department of Public Works has requested that your consultants submit geometrics and plans to show how the center can operate adjacent to a freeway (Kellogg) with access to and from the freeway via the West Street interchange. In addition, the consultant should also submit interim plans for road improvements needed to handle the center's traffic in the interim between construction of the center and the improvement of U.S. 54 to freeway standards. The plans should contain a capacity analysis of the arterials, the geometrics for at least six lanes on Maple, six lanes on West, and shall be designed so as to accommodate service level C as defined in the 1972 areawide TOPICS plan. The study by the consultant should also address these other preliminary comments by Public Works regarding streets: (1) Maple Street from Ridge Road to Elder (including floodway bridge) would have to be improved prior to opening the center. It should be noted that the improvement of Maple Street in this area is not a priority item of the City of Wichita as evidenced by the fact that it is not included in the 1975-80 Capital Improvement Program, and the developer should be prepared to request that the governing body revise its priorities and amend the CIP or the developer should guarantee the improvements. (2) Maple Street should be improved from Elder Street east to West Street and beyond an appropriate distance, to provide channelization; left turn bays, accel-decel lanes, etc. as required by the impact of this development. (3) The impact of the center on Taft and Tracy Streets should be measured in order to determine appropriate design standards for both streets to be four lanes in width with left and right turn bays, channelization, accel-decel lanes, etc. (4) Westdale Drive (which needs to be depicted on the CUP) and Anna Street should tie into a proposed public street on the southern portion of the CUP in order to provide a loop street system to serve office development to the south of subject property. The proposed public street should be dedicated and constructed to public standards from Westdale Drive to Anna, and the consultant should consider question of whether the proposed private street should not be made a public street east of Anna to Tracy.



- (5) The cul-de-sacs proposed in the consultant's report for the residential streets to the north of Maple represent one solution for the protection of the residential area, but alternate solutions should be developed so that the neighborhood residents may express their preference for neighborhood protection. The developers should also be prepared to discuss the method by which they propose to pay for the needed improvements."

Numerous correspondence between the consulting engineers and the Traffic Engineering Division occurred through December of 1974 with regard to our way of approaching the traffic-handling solutions and their way of approaching them. Neither party ever came to a common area of agreement.

A summary of results of the consultant's discussion and our disagreements is contained in a memo to Bob Lakin dated December 31, 1974.

The next correspondence concerns a meeting of April 8, 1975 where some of the previous participants have been eliminated and new participants have been added. The Law Company now comes in for Parker-Krehbiel Associates and Art Roberts replaces Barton-Aschman. The summary of that meeting was provided by Bodrell Joer'dan Smith.

April 17, 1975 Memo directed to Wichita-Sedgwick County Metropolitan Area Planning Commission from Jack Galbraith, Subject: Towne West Square CUP. Again, Galbraith basically restated what we quoted in earlier CUP comments with regard to U.S. 54 becoming a controlled access freeway. "The staff has requested that the applicant's traffic consultant prepare a site traffic analysis for the proposed center which not only provides solutions for handling traffic during the next few years while access to U. S. 54 is still permitted, but also can be designed to ultimately tie in with the proposed West Street interchange, once U. S. 54 is constructed to freeway standards and no direct access is permitted to subject property."

April 25, 1975 Memo to Art Roberts from Paul B. Graves. "In earlier comments to your developer and confirmed by Mr. Melvin Simon, you should be prepared to present a Phase I and a Phase II traffic analysis. As previously indicated to you, Phase I would envision using Kellogg only until such time as Kellogg becomes a freeway segment. Phase II would orient your traffic to Maple and Taft by way of West Street. I believe it was the Planning Commission's desire to review the nitty-gritty of the plan with regard to lane requirements, right-of-way requirements, special treatments to frontage roads; and their main concern was with regard to other developments on the peripheral and remote area from your site which would be greatly influenced by your proposed development."

May 7, 1975 "Notice to Adjacent Property Owners of Proposed Towne West Square" was mailed out to notify area residents of May 1975 public hearing in the Planning Commission conference room with regard to the proposed Towne West Square. At the May 21 Traffic Commission meeting, Chairman Hatfield called for the motion



"That we not make a decision at this time and to report back on or before June 11."  
Motion seconded and carried unanimously. Notice sent out on May 30 notifying area residents of the June 11, 1975 meeting on the same subject. This meeting was then postponed as a result of further time requested by the Kansas Highway Commission to review the proposed plans of the consultant and the City with regard to traffic circulation. The meeting was rescheduled until Wednesday, June 25, 1975.

July 15, 1975 The City Commission made the following motion: "Stevens moved that the zoning change and the CUP as amended be approved, subject to the stated conditions as recommended by the MAPC, and subject to all street improvements, including geometrics, drainage and proposed funding allocations be submitted to and receive the approval of the City Commission prior to plat approval; and the Planning Department be instructed to forward the ordinance for first reading when the plat is forwarded to the City Commission." Motion carried 3 to 2.

A summary of the events that occurred at the November 10, 1975 meeting in Topeka, Kansas with the Urban Highways Department indicates most of the then-agreed to geometrics on Kellogg with two entrances off of Kellogg, signalization of the eastern entrance, double left turns into the entrances required stacking, etc. Of course, this proposal has been superseded by further meetings. Quoting from a letter of November 13, 1975 directed to Mel Simons from Art Roberts, the then-consulting traffic engineer for the site, "(4) Right-of-way should be reserved where required for street improvements that are adjacent to the shopping complex." "Attention was called to the right-of-way lines on Maple, both for the initial improvement and the final improvement of Maple to a six-lane facility. It was agreed that the right-of-way should bow to the north on Maple Street opposite the church."

A joint meeting was held between the Metropolitan Area Planning Commission and the Traffic Commission on the Towne West site. The results of that joint meeting were taken to the City Commission on May 11, 1976. Quoting from the minutes of that meeting: "Joint Public Hearing between the Metropolitan Area Planning Commission and the Traffic Commission on Towne West, presented. A joint public hearing was held by the Traffic Commission and the Metropolitan Area Planning Commission on March 17, 1976 regarding Towne West Shopping Center traffic improvements. Following the hearing, the respective bodies took the following action: (1) The Traffic Commission unanimously moved 'that the Traffic Commission approve the plans in concept with further consideration being given to designing Kellogg to meet freeway standards eliminating conflicting cross traffic patterns;

to street terminations north of Maple in order to control traffic created by Towne West; and to negotiate the objections raised during this hearing from business concerns to mutual satisfaction of all involved.'

"(2) The Planning Commission unanimously moved 'that the Planning Commission approve, subject to necessary revisions and corrections, proposed Towne West traffic plan. Further direct the Planning Department to continue working out the necessary details covering the traffic and street patterns needed to complete Towne West.'"

"Commissioner Shanahan stated that the expenses of additional streets required as a result of Towne West are going to be paid for by the developer and not the city at large." "Donnell moved that the minutes of the joint meeting be received and filed. Motion carried 3 to 0."

The next action of the City Commission was June 29, 1976; contained within those minutes is the Towne West Square Traffic Study, presented. "At the meeting of May 11, 1976, the City Commission received and filed a joint MAPC - Traffic Commission report on traffic in the vicinity of the proposed Towne West Shopping Center. At that time, the Commission requested that a report be provided which would reflect the anticipated street system in the area for a period of 10-15 years with and without the proposed Towne West development along with costs for projected improvements for the area. The Commission indicated that a policy statement regarding cost of improvements necessitated by major developments could result from this study.

"Two reports have been prepared for review by the Commission. The Traffic Engineering Division has submitted a general overall review of the impact of the proposed Towne West Shopping Center forecast through 1985. Estimated cost of the street improvements for the area is \$2,493,961. A second report detailing Planning Commission consideration of the street improvement plan has also been provided to the Commission.

"The Planning Commission has approved the proposed geometrics of the various street improvements, except that mountable medials are recommended to be used to the greatest extent possible on the improvement of Tracy. The Planning Commission further moved to recommend financing of the proposed improvements as follows:

City of Wichita	\$ 500,000
Special Assessments	98,907
Towne West Developer	<u>1,811,437</u>
	\$2,410,344

"Right-of-way (\$83,617) was not included in the motion of the Planning Commission. Any Federal/State monies which become available would be used to reduce the City's and developer's share of the cost. As of preparation of this agenda, the State has not yet advised the City as to the amount of funds it would be willing to contribute to this project. The Commission has also been provided with a copy of the revised analysis of the Towne West Square Shopping Center prepared by the Arthur Roberts Consulting Firm. The Director of Planning recommended that in order for this project to proceed, the City Commission give tentative approval to the street improvement design and to the recommended funding. City Manager concurred." Robert Lakin, Director of Planning, presented the general site plan and stated that there was a possibility of the City receiving as much as \$443,000 for improvement of Kellogg and West under Highway Safety Funds.



Towne West Summary -- page 5

"Donnell moved that the project proceed, that the Commission give tentative approval to the street improvement design and to the funding recommended by MAPC with the following exceptions: that the City of Wichita pick up the right-of-way costs (\$83,617), and that any state funds received be applied to reduce the cost to the developer (estimated to be \$443,000), resulting in the funding to be as follows:

City at large	\$ 583,617
Special Assessments	98,907
Developer	1,368,437

"Casado moved an amendment to the motion that it also be subject to something satisfactory to both parties being work out by the Town and Country Lodge and the developer regarding access. Amendment carried 4 to 0."

August 2, 1976 Bob Lakin sent a letter to Mr. William Ogan, State Transportation Engineer, Re: City Commission action of approving the Towne West Square and Requesting review of the proposed plans for Kellogg and West; and at such time as the City had their approval, the City Engineer would initiate the project.

On February 24, 1977, William Ogan replied to Bob Lakin's letter and stated, "We are also now in a position to consider the financing of the portion of the project which encompasses the intersection of Kellogg and West Street. High Hazard Location Safety Funds in the amount of \$443,000 are being reserved for use in the improvement based upon the estimate which you forwarded previously. Final allocation of these funds is contingent upon FHWA approval of the improvement based upon the safety benefits to the location."

The Director of Public Works on April 5, 1977 submitted a letter to Ogan in response to Bob Lakin's letter. "I am hereby requesting funding for the improvement of this intersection through the use of High Hazard Location Safety Funds." (Of course, the intersection was Kellogg and West Street.)

A meeting was held on June 10, 1977 at the KDOT conference room to discuss design concepts of the U.S. 54 and West Street urban interchange, sometimes referred to a "tight diamond". The results of that meeting was the City and State would further consider the benefits of the tight diamond interchange and discuss traffic generation rates in the general vicinity.

Although the files are incomplete at this time, it is my recollection that correspondence by telephone and in person between Fred Terry, Bill Armstrong and other members of the KDOT staff was conducted by this office for the next couple of months with the results that the urban interchange became more and more feasible and actually looked like the only solution for handling the traffic forecast to the Kellogg and West intersection. As the plans proceeded, I believe Federal Highway Administration officials stated they would not spend the safety funds which were previously sought by the City of Wichita at the intersection of Kellogg



and West to do a short-range benefit and actually not solving the traffic-handling problem. Through several meetings where Planning Department, City Manager, KDOT and FHWA were involved along with our department, it was decided that the funding which was earmarked for right-of-way from I-235 west to Seville would be redirected to construction with immediate construction of Phase I which would be the Kellogg Airport interchange and the second phase of construction, the urban interchange at Kellogg and West. This was agreed upon by officials attending these meetings that every effort would be made to further these two projects.

On October 31, 1977, a memo to Paul Graves from Robert Lakin, Director of Planning, Subject: Towne West. "The City Manager has asked that a meeting be convened to review the status of the Towne West project. Accordingly, I have set Friday, November 4 in the 10th floor conference room at 1:30 pm to convene such a meeting." The results of that meeting are not contained within our files.

On January 23, 1978, a letter to the file was composed by Robert Lakin in reference to a meeting held with officials from J. C. Penney Company, Mel Simon and Associates and City staff along with the Law Company to discuss traffic improvements to Towne West. Discussion largely centered around the procedures, timing and design for Maple Street interchange at I-235 and the proposed Kellogg freeway improvements from West Street to I-235.

On March 23, 1978, William L. Stockwell, Chief Planner, Advance Plans, submitted to the Wichita Sedgwick County Metropolitan Area Planning Commission a report entitled, "I-235/Maple Street Interchange". Quoting from that report, "The circumstances on West U.S. 54 and consequently the request for consideration of an I-235/Maple Street interchange, centers on two major situations in this corridor. The first situation involved both the desire and need to improve U.S. 54 to a freeway level facility through as much of Wichita as possible. The second situation involves the intensive land development expected along such a corridor and particularly the Towne West Shopping Center development already planned for the area."

"In 1977, though, KDOT approached the Wichita City Commission with a proposal that would provide for a partial upgrading of West U.S. 54 to freeway standards. The proposal involved decreasing the emphasis on U. S. 54 west of Ridge and the new Airport interchange, using the funds originally allocated for right-of-way in this section, to construct the section from the Airport interchange to West Street at freeway standards. KDOT had also determined that an interchange design known as the 'urban interchange' could be adapted to the West Street location within approximately the existing right-of-way, while still providing for grade separation and full access control of traffic at the intersection. The City Commission endorsed the proposal indicating the following construction priorities: first

emphasis on the Airport/Ridge Road interchange, second priority the West Street interchange, and thirdly, the full upgrade of the link between these interchanges to freeway status. Programming of these projects has already been scheduled in the CIP and KDOT's Planned Transportation Program."

"Without access from U. S. 54, preliminary traffic engineering studies have indicated that even with the expected improvements on West and Maple Streets, traffic congestion would become excessive unless other improvements were implemented. Accordingly, the I-235/Maple Street interchange has been recommended as an appropriate means to provide service to the traffic occurring and projected in this area. The attached study done by the City's Traffic Engineering Division assesses the situation with an I-235/Maple Street interchange, a U.S. 54/West Street interchange, and no direct access to Towne West from U. S. 54. In general, the report indicates that with the above improvements, including those on Maple and West Streets, traffic can be adequately handled up to and beyond 1990 conditions."

A letter contained in our file on June 1, 1978 to William Ogan to Paul B. Graves quoting from that letter, "Enclosed are copies of correspondence we received from John Collins of Raymond Keyes Engineers, P.C., with reference to Towne West Square. In addition, we have enclosed three prints of a possible interchange at West and Kellogg. Alternate #1 of these prints is the urban interchange as we presented it to the State several months ago. Alternate #2 is a slight modification of the urban interchange to provide for frontage road continuation on the north side. Alternate #3 is basically the Texas U-turn type diamond interchange which is being proposed by Raymond Keyes Engineers."

"In reviewing the alternates in-house, our first priority would be Alternate #1 (the urban interchange) which would have the highest capacity at Kellogg and West Street. This urban interchange could operate with a three-phase traffic signal. The second priority would be Alternate #2 which has the advantage of providing access to the businesses in the northwest quadrant of the interchange and possibly eliminating a heavy right turn in the northeast quadrant. Its disadvantage is another phase in the signal operation and increased distance to transverse the intersection. Alternate #3, the third priority, has the advantage of providing access to all quadrants with the disadvantage of two signalized intersections and possibly some real stacking problem between the signalized intersection. It would be our opinion that the intersections would have to be spread out 400' to 600' to operate properly."

"We are tentatively scheduled to review the consultant's analysis on June 7. He has indicated a desire to review these plans with you on Thursday, June 8. If you wish to discuss these plans in further detail, please contact the undersigned."

On May 1, 1978, Mr. Wayne McCollam wrote a letter to William Ogan, and quoting from that letter, "Your January 3 request for an additional access point on I-235 and Maple Street in Wichita has been approved. This allows an interchange to be constructed to better serve development in the area. Since the proposed interchange is needed to accommodate increased traffic volumes associated with development occurring after completion of I-235, the interchange must be financed with other than federal-aid interstate funds."

A meeting was THEN held on June 8, 1978 with KDOT in Topeka, Kansas. Those in attendance at that meeting were Robert Lakin, F. J. Reid, Engineer of Urban Highways, Clifford H. Price, KDOT Design, Tom Swinson, KDOT-Urban Highways, William Segelquist, KDOT Design, William G. McKinley, Fred Terry, KDOT Urban Highways, Herb L. Berger, Law/Kingdon, John Collins, Raymond Keyes Engineers, Raymond



Towne West Summary -- page 8

Rubuls, Melvin Simon and Associates, Karlton Naylor, KDOT Design. Shortly after this meeting, KDOT approved the alternate which allowed for frontage road on the north side of Kellogg and West to be continued through.



Touma West Sound  
original title report

# Lawyers Title Insurance Corporation

A STOCK COMPANY  
Home Office—Richmond, Virginia

## COMMITMENT FOR TITLE INSURANCE SCHEDULE A

Platting Binder

1. Effective date  
March 5, 1979 @ 7:55 A. M.
2. Policy or policies to be issued:

Case No. \_\_\_\_\_

- (a) ALTA Owner's Policy—Form B-1970 (Rev. 10-17-70)  
Proposed insured:

Amount \$ \_\_\_\_\_

WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION

- (b) ALTA Loan Policy, 1970 (Rev. 10-17-70)  
Proposed insured:

Amount \$ \_\_\_\_\_

- (c)  
Proposed insured:

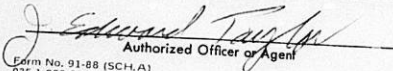
Amount \$ \_\_\_\_\_

3. Title to the fee simple estate or interest in the land described or referred to in this Commitment is at the effective date hereof vested in:  
TOWNE WEST MALL COMPANY, an Indiana limited partnership

4. The land referred to in this Commitment is described as follows:

All of TOWNE WEST SQUARE ADDITION, Sedgwick County, Kansas,  
to be platted as TOWNE WEST SQUARE SECOND ADDITION, Wichita,  
Sedgwick County, Kansas.

Countersigned at Wichita, Kansas 3/8/79 JM

  
Authorized Officer or Agent

Form No. 91-88 (SCH. A)  
035-1-088-0099

Schedule A—Page 1—No.

(over)  
ORIGINAL

**Lawyers Title Insurance Corporation**  
A Stock Company  
Home Office - Richmond, Virginia

COMMITMENT FOR TITLE INSURANCE

LAWYERS TITLE INSURANCE CORPORATION, a Virginia corporation, herein called the Company, for valuable consideration, hereby commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest covered hereby in the land described or referred to in Schedule A, upon payment of the premiums and charges therefor, all subject to the provisions of Schedules A and B and to the Conditions and Stipulations hereof.

This Commitment shall be effective only when the identity of the proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A hereof by the Company, either at the time of the issuance of this Commitment or by subsequent endorsement.

This Commitment is preliminary to the issuance of such policy or policies of title insurance and all liability and obligations hereunder shall cease and terminate six (6) months after the effective date hereof or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue such policy or policies is not the fault of the Company. This Commitment shall not be valid or binding until countersigned by an authorized officer or agent.

IN WITNESS WHEREOF, the Company has caused this Commitment to be signed and sealed, to become valid when countersigned by an authorized officer or agent of the Company, all in accordance with its By-Laws. This Commitment is effective as of the date shown in Schedule A as "Effective Date."



**Lawyers Title Insurance Corporation**

*Robert C. Dawson*  
President

Attest:

*Roy Hammond*  
Secretary



# Lawyers Title Insurance Corporation

A STOCK COMPANY  
Home Office—Richmond, Virginia

## SCHEDULE B—Section 1 Requirements

The following are the requirements to be complied with:

Item (a) Payment to or for the account of the grantors or mortgagors of the full consideration for the estate or interest to be insured.

Item (b) Proper instrument(s) creating the estate or interest to be insured must be executed and duly filed for record, to-wit:

1. Plat executed by Towne West Mall Company, an Indiana limited partnership, and The Fourth National Bank and Trust Company, Wichita, as mortgagee.

Item (c) Payment of taxes for the year 1978. (Key No. D-32556).

Schedule B—Section 1—Page 1

CONDITIONS AND STIPULATIONS

1. The term "mortgage," when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquires actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions and Stipulations.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions and the Conditions and Stipulations and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.

Lawyers Title Insurance Corporation  
A Stock Company  
Home Office - Richmond, Virginia



# Lawyers Title Insurance Corporation

A STOCK COMPANY  
Home Office - Richmond, Virginia

## SCHEDULE B-Section 2

### Exceptions

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.
2. General taxes for the year 1979 and subsequent years together with special assessments due and payable therewith.
3. License and covenants between Towne West Mall Company, an Indiana limited partnership and WW-CC Co., a partnership recorded February 9, 1976 in Film 176 at 707 providing for a 100 foot building set-back line along the Southeast corner of Lot 1, TOWNE WEST SQUARE ADDITION.
4. Possible special assessments by reason of ordinance(s) and/or resolution(s) of record.
5. Easements, rights of way, access control and other physical evidence as reflected in the Plat of TOWNE WEST SQUARE ADDITION filed in the Office of the Register of Deeds, Sedgwick County, Kansas, April 20, 1978.
6. Terms and conditions of Community Unit Plan and possible changes in location or type of highway as evidenced by letter from Melvin Simon, General Partner, Towne West Mall Company, recorded in Film 299 at 1511, copy hereby attached.
7. Mortgage in favor of The Fourth National Bank and Trust Company, recorded May 24, 1974 in Mortgage Book 102, Page 1353.

NOTE: If policy is to be issued in support of a mortgage loan, attention is directed to the fact that the Company can assume no liability under its policy, the closing instructions, or Insured Closing Service for compliance with the requirements of any consumer credit protection or truth in lending law in connection with said mortgage loan.

Schedule B-Section 2-Page 1



AMERICAN LAND  
TITLE ASSOCIATION  
STANDARD FORM  
COMMITMENT



**Lawyers Title**  
Insurance Corporation  
A Stock Company  
Home Office  
Richmond, Virginia

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ATTORNEYS AT LAW

800 BROWN BUILDING  
WICHITA, KANSAS 67202  
TELEPHONE (316) 262-4403

R. L. HOLMES (860-1929)  
W. E. HOLMES (807-1956)  
JOHN J. DARRAH (910-1973)  
GEORGE R. COMPTON (841-1976)

PHILLIP MELLOR  
JAMES R. SCHAEFER  
JORDEN P. MILLER  
KIM A. ROBERTS

WILBUR H. JONES  
COUNSEL

March 28, 1979



Mr. E. H. Denton  
City Manager  
City Hall  
455 North Main  
Wichita, Kansas 67202

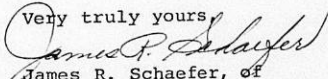
Dear Mr. Denton:

Re: Towne West Square  
Second Addition Plat

I would appreciate your placing the final plat of Towne West Square Addition on the City Commission agenda for April 3, 1979.

There are several of the department stores as well as the owner of the Mall area, who are attempting to proceed, post haste, with construction of their facilities and the plat is required so that the various lots can be conveyed to them.

I believe we have completed all platting requirements with the exception of one item which is currently under discussion with the Law Department and we feel this can be resolved within the next day or so.

Very truly yours,  
  
James R. Schaefer, of  
MELLOR, SCHAEFER & MILLER, P.A.

jrs/f  
c/ Robert Lakin



RECOMMENDATION FROM METROPOLITAN AREA PLANNING COMMISSION TO BOARD OF CITY COMMISSIONERS

Maple - 1 est 64  
 2 70  
 3 71  
 4 72  
 5 73  
 Phasalt 74  
 75

61-63  
 64 CUP  
 65 EXIST  
 66 NEW P.  
 67 " F  
 68 "

SUBDIVISION APPROVAL

S/D Number 79-7 Name Towne West Square Second Addition  
 Application & Sketch Filed: 1-16-79  
 Preliminary Plat Filed: 1-16-79 Approved by S/D: 1-25-79  
 Final Plat Filed: 2-12-79 Approved by S/D: 2-22-79  
 Approved by Metropolitan Area Planning Commission: 3-1-79

DESCRIPTION

General Location: On the south side of Maple and West of Tracy

Surveyor or Engineer: Campbell and Castle  
 Owner: Towne West Mall Indiana Limited Partnership  
 Address: P.O. Box 44930, Indianapolis, Indiana 46244

- |                                 |                                 |
|---------------------------------|---------------------------------|
| 1. Gross Acreage of Plat 83.694 | 6. Access Control               |
| 2. Number of Lots:              | St. Maple No. Openings 3        |
| Residential _____               | St. Tracy No. Openings 6        |
| Commercial 11 _____             | St. _____ No. Openings _____    |
| Industrial _____                | 7. Req'd Improvements: See note |
| Other Reserve -1 _____          | St. Paving _____ Water _____    |
| Total Number of Lots: 12        | Sidewalk _____ Drainage _____   |
| 3. Minimum Lot Area: N/A Acres  | Sewer _____ Other _____         |
| 4. Existing Zoning "TC"         |                                 |
| 5. Special Problems Discussed   | I-235 Maple Street Interchange  |

NOTE: All improvements, street paving, extension of sewer, drainage, etc., were previously guaranteed on Towne West Square Addition and are still applicable to this replat.

Planning Commission Recommendation: That this plat be approved subject to:

- A. The applicants' attorney shall submit an instrument to be recorded with the plat which shall assure vehicular access between each lot and from each lot to the private ring road, access to parking, utilities access to each lot, and drainage across the lots.
- B. The applicant shall submit by separate instrument a contingent street dedication for right-of-way for the proposed Maple Street-I 235 interchange. The dedication being contingent upon the need to construct the interchange and upon Kellogg being reconstructed to a freeway standard.
- C. Recording of the plat within 30 days after approval by the Board of City Commissioners.

Cole moved, Taylor seconded and it carried unanimously. Hennessy was absent.

ACTION: Accept the contingent right-of-way dedication, approve the plat as approved by the Metropolitan Area Planning Commission, authorize the Mayor to sign the plat and instruct the Planning Department to withhold recording of the plat until conditions of approval A and B have been completed.



RECOMMENDATION FROM METROPOLITAN AREA PLANNING COMMISSION TO  
BOARD OF CITY COMMISSIONERS

SUBDIVISION APPROVAL

S/D Number 79-7 Name Towne West Square Second Addition  
Application & Sketch Filed: 1-16-79  
Preliminary Plat Filed: 1-16-79 Approved by S/D: 1-25-79  
Final Plat Filed: 2-12-79 Approved by S/D: 2-22-79  
Approved by Metropolitan Area Planning Commission: 3-1-79

DESCRIPTION

General Location: On the south side of Maple and West of Tracy

Surveyor or Engineer: Campbell and Castle  
Owner: Towne West Mall Indiana Limited Partnership  
Address: P.O. Box 44930, Indianapolis, Indiana 46244

- |   |  |
|---|--|
| 1. Gross Acreage of Plat <u>83.694</u>                              | 6. Access Control                      |
| 2. Number of Lots:  | St. <u>Maple</u> No. Openings <u>3</u> |
| Residential _____   | St. <u>Tracy</u> No. Openings <u>6</u> |
| Commercial <u>11</u>  | St. _____ No. Openings _____           |
| Industrial _____  | 7. Req'd Improvements: See note        |
| Other _____   | St. Paving _____ Water _____           |
| Total Number of Lots: <u>12</u>                                     | Sidewalk _____ Drainage _____          |
| 3. Minimum Lot Area: <u>N/A</u> Acres                               | Sewer _____ Other _____                |
| 4. Existing Zoning <u>"LC"</u>                                      |  |
| 5. Special Problems Discussed <u>I-235 Maple Street Interchange</u> |  |

NOTE: All improvements, street paving, extension of sewer, drainage, etc., were previously guaranteed on Towne West Square Addition and are still applicable to this replat.

Planning Commission Recommendation: That this plat be approved subject to:

- A. The applicants' attorney shall submit an instrument to be recorded with the plat which shall assure vehicular access between each lot and from each lot to the private ring road, access to parking, utilities access to each lot, and drainage across the lots.
- B. The applicant shall submit by separate instrument a contingent street dedication for right-of-way for the proposed Maple Street-I 235 interchange. The dedication being contingent upon the need to construct the interchange and upon Kellogg being reconstructed to a freeway standard.
- C. Recording of the plat within 30 days after approval by the Board of City Commissioners.

Cole moved, Taylor seconded and it carried unanimously. Hennessy was absent.

ACTION: Accept the contingent right-of-way dedication, approve the plat as approved by the Metropolitan Area Planning Commission, authorize the Mayor to sign the plat and instruct the Planning Department to withhold recording of the plat until conditions of approval A and B have been completed.

# Lawyers Title Insurance Corporation

A STOCK COMPANY  
Home Office—Richmond, Virginia  
**COMMITMENT FOR TITLE INSURANCE**  
SCHEDULE A

### Platting Binder

1. Effective date  
**March 5, 1979 @ 7:55 A. M.**
2. Policy or policies to be issued:

Case No. \_\_\_\_\_

(a) ALTA Owner's Policy—Form B-1970 (Rev. 10-17-70)  
Proposed insured:

Amount \$ \_\_\_\_\_

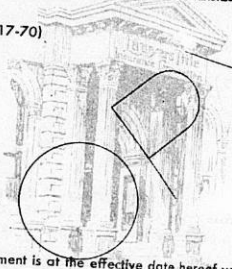
**WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION**

(b) ALTA Loan Policy, 1970 (Rev. 10-17-70)  
Proposed insured:

Amount \$ \_\_\_\_\_

(c)  
Proposed insured:

Amount \$ \_\_\_\_\_



3. Title to the **fee simple** estate or interest in the land described or referred to in this Commitment is at the effective date hereof vested in:  
**TOWNE WEST MALL COMPANY, an Indiana limited partnership**

4. The land referred to in this Commitment is described as follows:

**All of TOWNE WEST SQUARE ADDITION, Sedgwick County, Kansas, to be platted as TOWNE WEST SQUARE SECOND ADDITION, Wichita, Sedgwick County, Kansas.**

Countersigned at **Wichita, Kansas 3/8/79 JM**

*J. Edward Taylor*  
Authorized Officer or Agent

Schedule A—Page 1—No.

Form No. 91-88 (SCH. A)  
039-1-088-0099

(over)  
EXTRA COPY

# Lawyers Title Insurance Corporation

A Stock Company  
Home Office - Richmond, Virginia

## COMMITMENT FOR TITLE INSURANCE

LAWYERS TITLE INSURANCE CORPORATION, a Virginia corporation, herein called the Company, for valuable consideration, hereby commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest covered hereby in the land described or referred to in Schedule A, upon payment of the premiums and charges therefor; all subject to the provisions of Schedules A and B and to the Conditions and Stipulations hereof.

This Commitment shall be effective only when the identity of the proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A hereof by the Company, either at the time of the issuance of this Commitment or by subsequent endorsement.

This Commitment is preliminary to the issuance of such policy or policies of title insurance and all liability and obligations hereunder shall cease and terminate six (6) months after the effective date hereof or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue such policy or policies is not the fault of the Company. This Commitment shall not be valid or binding until countersigned by an authorized officer or agent.

IN WITNESS WHEREOF, the Company has caused this Commitment to be signed and sealed, to become valid when countersigned by an authorized officer or agent of the Company, all in accordance with its By-Laws. This Commitment is effective as of the date shown in Schedule A as "Effective Date."



Lawyers Title Insurance Corporation

*Robert C. Dawson*

President

Attest:

*Roy Smithered*

Secretary.

COMMITMENT FOR TITLE INSURANCE



# Lawyers Title Insurance Corporation

A STOCK COMPANY  
Home Office—Richmond, Virginia

## SCHEDULE B—Section 1

### Requirements

The following are the requirements to be complied with:

Item (a) Payment to or for the account of the grantors or mortgagors of the full consideration for the estate or interest to be insured.

Item (b) Proper instrument(s) creating the estate or interest to be insured must be executed and duly filed for record, to-wit:

1. Plat executed by Towne West Mall Company, an Indiana limited partnership, and The Fourth National Bank and Trust Company, Wichita, as mortgagee.

Item (c) Payment of taxes for the year 1978. (Key No. D-32556).

COPY

CONDITIONS AND STIPULATIONS

1. The term "mortgage," when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquires actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions and Stipulations.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions and the Conditions and Stipulations and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.

Lawyers Title Insurance Corporation  
A Stock Company  
Home Office - Richmond, Virginia

# Lawyers Title Insurance Corporation

A STOCK COMPANY

Home Office - Richmond, Virginia

## SCHEDULE B-Section 2

### Exceptions

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.
2. General taxes for the year 1979 and subsequent years together with special assessments due and payable therewith.
3. License and covenants between Towne West Mall Company, an Indiana limited partnership and WW-CC Co., a partnership recorded February 9, 1976 in Film 176 at 707 providing for a 100 foot building set-back line along the Southeast corner of Lot 1, TOWNE WEST SQUARE ADDITION.
4. Possible special assessments by reason of ordinance(s) and/or resolution(s) of record.
5. Easements, rights of way, access control and other physical evidence as reflected in the Plat of TOWNE WEST SQUARE ADDITION filed in the Office of the Register of Deeds, Sedgwick County, Kansas, April 20, 1978.
6. Terms and conditions of Community Unit Plan and possible changes in location or type of highway as evidenced by letter from Melvin Simon, General Partner, Towne West Mall Company, recorded in Film 299 at 1511, copy hereby attached.
7. Mortgage in favor of The Fourth National Bank and Trust Company, recorded May 24, 1974 in Mortgage Book 102, Page 1353.

NOTE: If policy is to be issued in support of a mortgage loan, attention is directed to the fact that the Company can assume no liability under its policy, the closing instructions, or Insured Closing Service for compliance with the requirements of any consumer credit protection or truth in lending law in connection with said mortgage loan.

Schedule B-Section 2-Page 1



AMERICAN LAND TITLE ASSOCIATION

STANDARD FORM COMMITMENT

Exhibit A

AMERICAN LAND  
TITLE ASSOCIATION  
STANDARD FORM  
COMMITMENT



**Lawyers Title**  
**Insurance Corporation**  
A Stock Company  
Home Office  
Richmond, Virginia

Copyright 1957 by American Land Title Association, 1115 North 17th Street, Arlington, Virginia 22209. This document is a standard form of contract and is not intended to be used in any jurisdiction where it is not approved by the appropriate authorities. It is subject to change without notice.

SEDDGWICK COUNTY TREASURER  
525 N. MAIN STREET  
WICHITA, KANSAS 67203

RECEIPT  
TAXED ITEMS

FIRST CLASS  
PERMIT NO.  
268

1978 REAL ESTATE		SECOND HALF	3/12/79	ML
VALUATION	2160			
MILL LEVY				
GEN TAX	29.48			
OTHER TAX				
TOTAL DUE	29.48			
HALF TAX	14.74	14.74	.00	14.74 6093 658833
6A MAR 20 79				

78-RE-00-8307-97-1-U 67-02

INTEREST 13  
CA 3345.72

-D -32562  
TOWNE WEST MALL COMPANY  
1712 N MERIDIAN  
INDIANAPOLIS IND 46202

SEDDGWICK COUNTY TREASURER  
525 N. MAIN STREET  
WICHITA, KANSAS 67203

RECEIPT  
TAXED ITEMS

FIRST CLASS  
PERMIT NO.  
268

1978 REAL ESTATE		SECOND HALF	3/12/79	ML
VALUATION	600			
MILL LEVY				
GEN TAX	77.09			
OTHER TAX				
TOTAL DUE	77.09			
HALF TAX	38.55	38.55	.00	38.55 6093 658832
6A MAR 20 79				

78-RE-00-8307-96-1-W 67-02

INTEREST  
CA  
CK

-D -32561  
TOWNE WEST MALL COMPANY  
1712 N MERIDIAN  
INDIANAPOLIS IND 46202

SEDDGWICK COUNTY TREASURER  
525 N. MAIN STREET  
WICHITA, KANSAS 67203

RECEIPT  
TAXED ITEMS

FIRST CLASS  
PERMIT NO.  
268

1978 REAL ESTATE		SECOND HALF	3/12/79	ML
VALUATION	531			
MILL LEVY				
GEN TAX	60.09			
OTHER TAX				
TOTAL DUE	60.09			
HALF TAX	30.05	30.05	.00	30.05 6093 658831
6A MAR 20 79				

78-RE-00-8307-45-1-W 67-02

INTEREST  
CA  
CK

-D -32560  
TOWNE WEST MALL COMPANY  
1712 N MERIDIAN  
INDIANAPOLIS IND 46202

SEDGWICK COUNTY TREASURER  
525 N. MAIN STREET  
WICHITA, KANSAS 67203

RECEIPT  
TAXED ITEMS

FIRST CLASS  
PERMIT NO.  
268

1978 REAL ESTATE	SECOND HALF	3/12/79	ML
VALUATION	430	LOT 4 TOWNE WEST SQUARE ADD	
MILL LEVY			
GEN TAX	48.75		
OTHER TAX			
TOTAL DUE	48.75		
HALF TAX	24.38	.00	24.38 6093 658830
6A MAR 28 1979			

78-RE-00-8307-94-1-W 67-02

INTEREST

CA \_\_\_\_\_

CK \_\_\_\_\_

-D -32559  
TOWNE WEST MALL COMPANY  
1732 N MERIDIAN  
INDIANAPOLIS IND 46202

SEDGWICK COUNTY TREASURER  
525 N. MAIN STREET  
WICHITA, KANSAS 67203

RECEIPT  
TAXED ITEMS

FIRST CLASS  
PERMIT NO.  
268

1978 REAL ESTATE	SECOND HALF	3/12/79	ML
VALUATION	202.50	LOT 4 TOWNE WEST SQUARE ADD	
MILL LEVY			
GEN TAX			
OTHER TAX	202.50		
TOTAL DUE	202.50		
HALF TAX	101.25	.00	101.25 6093 658829
6A MAR 28 1979			

78-RE-13-0600-02-8 67-02

INTEREST

CA \_\_\_\_\_

CK \_\_\_\_\_

-D -32559  
TOWNE WEST MALL COMPANY  
1732 N MERIDIAN  
INDIANAPOLIS IND 46202

SEDGWICK COUNTY TREASURER  
525 N. MAIN STREET  
WICHITA, KANSAS 67203

RECEIPT  
TAXED ITEMS

FIRST CLASS  
PERMIT NO.  
268

1978 REAL ESTATE	SECOND HALF	3/12/79	ML
VALUATION	740	LOT LOT 3 TOWNE WEST SQUARE ADD	
MILL LEVY			
GEN TAX	83.69		
OTHER TAX			
TOTAL DUE	83.69		
HALF TAX	41.95	.00	41.95 6093 658828
6A MAR 28 1979			

78-RE-00-8307-93-1-W 67-02

INTEREST

CA \_\_\_\_\_

CK \_\_\_\_\_

-D -32558  
TOWNE WEST MALL COMPANY  
1732 N MERIDIAN  
INDIANAPOLIS IND 46202



SEDGWICK COUNTY TREASURER  
525 N. MAIN STREET  
WICHITA, KANSAS 67203

RECEIPT  
TAXED ITEMS

FIRST CLASS  
PERMIT NO.  
268

1978 REAL ESTATE		SECOND HALF		3/12/79 ML	
VALUATION		LOT 3 TOWNE WEST SQUARE ADD			
MILL LEVY					
GEN TAX					
OTHER TAX	117.87				
TOTAL DUE	117.87				
HALF TAX	6A MAR 20 58.94	58.94	.00	58.94	6093 658827

78-RE-0100-01-6 67-02

INTEREST  
CA \_\_\_\_\_  
CK \_\_\_\_\_

-D -32550-  
TOWNE WEST HALL COMPANY  
1712 N MERIDIAN  
INDIANAPOLIS IND 46202

SEDGWICK COUNTY TREASURER  
525 N. MAIN STREET  
WICHITA, KANSAS 67203

RECEIPT  
TAXED ITEMS

FIRST CLASS  
PERMIT NO.  
268

1978 REAL ESTATE		SECOND HALF		3/12/79 ML	
VALUATION	630	LOT 2 TOWNE WEST SQUARE ADD			
MILL LEVY					
GEN TAX	71.42				
OTHER TAX					
TOTAL DUE	71.42				
HALF TAX	6A MAR 20 35.71	35.71	.00	35.71	6093 658826

78-RE-00-8307-1-W 67-02

INTEREST  
CA \_\_\_\_\_  
CK \_\_\_\_\_

-D -32557-  
TOWNE WEST HALL COMPANY  
1712 N MERIDIAN  
INDIANAPOLIS IND 46202

SEDGWICK COUNTY TREASURER  
525 N. MAIN STREET  
WICHITA, KANSAS 67203

RECEIPT  
TAXED ITEMS

FIRST CLASS  
PERMIT NO.  
268

1978 REAL ESTATE		SECOND HALF		3/12/79 ML	
VALUATION		LOT 2 TOWNE WEST SQUARE ADD			
MILL LEVY					
GEN TAX					
OTHER TAX	56.07				
TOTAL DUE	56.07				
HALF TAX	6A MAR 20 48.04	48.04	.00	48.04	6093 658825

78-RE-13-0599-11-2 67-02

INTEREST  
CA \_\_\_\_\_  
CK \_\_\_\_\_

-D -32557-  
TOWNE WEST HALL COMPANY  
1712 N MERIDIAN  
INDIANAPOLIS IND 46202

SEDGWICK COUNTY TREASURER  
525 N. MAIN STREET  
WICHITA, KANSAS 67203

RECEIPT  
TAXED ITEMS

FIRST CLASS  
PERMIT NO.  
268

1978 REAL ESTATE		SECOND HALF 3/12/79 ML	
VALUATION	50.000	LOT 1 TOWNE WEST SQUARE ADD	
MILL LEVY			
GEN TAX	5671.50		
OTHER TAX			
TOTAL DUE			
HALF TAX	6A MAR 20 79 2836.10	2,836.10	.00 2,836.10 6093 658824

78-RE-00-8397-92-1-W 67-02

INTEREST

CA \_\_\_\_\_  
CK \_\_\_\_\_

-D -32556  
TOWNE WEST MALL COMPANY  
1732 N MERIDIAN  
INDIANAPOLIS IND 46202

SEDGWICK COUNTY TREASURER  
525 N. MAIN STREET  
WICHITA, KANSAS 67203

RECEIPT  
TAXED ITEMS

FIRST CLASS  
PERMIT NO.  
268

1978 REAL ESTATE		SECOND HALF 3/12/79 ML	
VALUATION		LOT 1 TOWNE WEST SQUARE ADD	
MILL LEVY			
GEN TAX			
OTHER TAX	2,932.05		
TOTAL DUE	2,932.05		
HALF TAX	6A MAR 20 79 1,456.03	1,456.03	.00 1,456.03 6093 658823

78-RE-13-0599-15-0 67-02

INTEREST

CA \_\_\_\_\_  
CK \_\_\_\_\_

-D -32556  
TOWNE WEST MALL COMPANY  
1732 N MERIDIAN  
INDIANAPOLIS IND 46202

SEDGWICK COUNTY TREASURER  
525 N. MAIN STREET  
WICHITA, KANSAS 67203

RECEIPT  
TAXED ITEMS

FIRST CLASS  
PERMIT NO.  
268

1978 REAL ESTATE		SECOND HALF 3/12/79 ML	
VALUATION	4.400	U 111.69 FT LOT 6 JENKINS 4TH ADD	
MILL LEVY	113.3700		
GEN TAX	498.83		
OTHER TAX	163.50		
TOTAL DUE	112.37		
HALF TAX	6A MAR 20 79 331.17	331.17	.00 331.17 6093 658822

78-RE-13-0323-12-0 67-02

INTEREST

CA \_\_\_\_\_  
CK \_\_\_\_\_

-D -28407-  
TOWNE WEST MALL COMPANY  
1732 N MERIDIAN ST  
INDIANAPOLIS IND 46202



SEDGWICK COUNTY TREASURER  
 525 N. MAIN STREET  
 WICHITA, KANSAS 67203

**RECEIPT**  
 TAXED ITEMS

FIRST CLASS  
 PERMIT NO.  
 268

<b>1978 REAL ESTATE</b>		<b>SECOND HALF 3/12/79 ML</b>	
VALUATION	5,850	S0-185-FT W-256-62-FT E-660-FT SW-1/4 NE-1/4 LY-N-UN HWY-54	
MILL LEVY	113.3700	ROW-B-1/2-VAC-YOUNG-ST-ON-W-B-1/2-VAC-ALLEY-ON-N-REC-26-27-10	
GEN TAX	663.23		
OTHER TAX			
TOTAL DUE	113.23		
HALF TAX	56.61		
6A MAR 26 1979		331.61	.00 331.61 6093 650021

78-RE-10-0056-08-L 67-02

INTEREST  
 CA \_\_\_\_\_  
 CK \_\_\_\_\_

-D -00385-02UP  
 TOWNE WEST MALL COMPANY  
 1712 N MERIDIAN ST  
 INDIANAPOLIS IND 46202



**MELVIN SIMON  
& ASSOCIATES, INC.** 

P.O. Box 44930 Indianapolis, Indiana 46244

February 22, 1979

City of Wichita  
c/o Metropolitan Area Planning Department  
455 North Main Street  
Wichita, Kansas

re: S/D 79-7  
Plat of Towne West Square  
Second Addition

Gentlemen:

This is to confirm that all of the street and utility guaranties which we have previously furnished to the City of Wichita in connection with the plat of Towne West Square Addition (S/D 77-24) shall be equally applicable to the above referenced plat of Towne West Square Second Addition and shall secure all of the same obligations in connection with the above referenced plat (S/D 79-7) which constitutes a further subdivision of the existing plat.

Yours truly,

TOWNE WEST MALL COMPANY

By 

Herbert Simon,  
General Partner

DANN PECAR NEWMAN TALESNICK & KLEIMAN  
ATTORNEYS AT LAW

THEODORE R. DANN  
PHILIP D. PECAR  
NORMAN R. NEWMAN  
STANLEY TALESNICK  
DAVID H. KLEIMAN  
DIXON B. DANN  
JOHN B. ABELS  
LAWRENCE B. ELSBERG  
LAWRENCE F. DOROCKE  
PAUL S. ELKIN  
KENNETH J. WILLIAMS  
JOHN L. HUDDINS

1600 MARKET SQUARE CENTER  
151 NORTH DELAWARE STREET  
INDIANAPOLIS, INDIANA 46204  
(317) 632-3232

MAILING ADDRESS:  
P. O. BOX 44109  
INDIANAPOLIS, INDIANA 46244

March 22, 1979

Mr. Robert A. Lakin  
Director of Planning  
Wichita - Sedgwick County Metropolitan  
Area Planning Department  
City Hall - Tenth Floor  
455 North Main Street  
Wichita, KS 67202



Re: Towne West Square

Dear Mr. Lakin:

Pursuant to our telephone conversations, enclosed herewith, please find a draft of a letter of covenant from Towne West Mall Company, dealing with the self-imposed restriction on the Developer's ability to amend the ring road portion of the Operating Agreement.

If this letter is acceptable to you, and will meet the objections raised in Mr. Thomas R. Powell's letter to Mr. James R. Schaefer of March 12, 1979, then we would propose to record the letter immediately after the recordation of the Operating Agreement which will be recorded immediately after the Towne West Square Second Addition plat is placed of record.

Please contact me upon your receipt of this letter. Thank you for your consideration.

Sincerely,

DANN PECAR NEWMAN  
TALESNICK & KLEIMAN

*Paul S. Elkin*  
Paul S. Elkin *dm*

PSE/dmm

Enclosure

cc: James R. Schaefer  
Robert Zigler  
Norman R. Newman



March 22, 1979

The Honorable Board of City Commissioners  
City Hall  
455 North Main  
Wichita, KS 67202

Re: Towne West Square Second Addition,  
Wichita, Sedgwick County, Kansas

Gentlemen:

<sup>u</sup>  
<sup>James J. Brown</sup>  
In connection with your consideration of the final plat of the Towne West Square Second Addition (the "Plat"), and the consideration of the same by the Wichita - Sedgwick County Metropolitan Area Planning Department, (~~the Planning Department~~), please be advised of the covenant of the undersigned, Towne West Mall Company, an Indiana limited partnership, and the entity which will retain the fee title ownership of Lot Number 1 as shown on the Plat. <sup>Dep</sup>

~~It is~~ <sup>is</sup> the covenant of the undersigned that it will not enter into any amendment or revision of Article 24 of that certain CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT ("Operating Agreement"), a copy of which Operating Agreement has heretofore been received by the Planning Department and is recorded in \_\_\_\_\_, in the Office of the Register of Deeds, Sedgwick County, Kansas, which would have the effect of denying to or terminating the access and use of the so-called Ring Road by any Lot delineated on the Plat which is granted the use of the same under Article 24 of the Operating Agreement, without the simultaneous granting of an equivalent means of access to said Lot: PROVIDED, HOWEVER, that nothing contained herein shall limit or be deemed to limit the undersigned's right to enter into any amendment of the Operating Agreement, or Article 24 thereof, which relocates, amends or revises the so-called Ring Road but does not terminate or deny access.

This covenant shall remain in full force and effect during the term of the Operating Agreement and shall be binding on the undersigned, its successors and assigns.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 1979.

TOWNE WEST MALL COMPANY, an Indiana  
limited partnership

By \_\_\_\_\_  
, General Partner



STATE OF INDIANA )  
                  )SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for the above named County and State,  
on this \_\_\_\_\_ day of \_\_\_\_\_, 1979, personally appeared \_\_\_\_\_  
\_\_\_\_\_, a General Partner in TOWNE WEST MALL COMPANY, an Indiana  
limited partnership, to me personally known to be the same person who executed  
the above and foregoing instrument and duly acknowledged the execution of the  
same for and on behalf, and as the act and deed of said limited partnership.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my  
official seal, the day and year last above written.

My commission expires:

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
My County of residence is:

\_\_\_\_\_



Law / Kingdon, P.A.

Architects Engineers Planners  
Construction Managers Consultants

March 17, 1979

Mr. Eric Wendt  
The Gas Service Company  
127 North Market  
P. O. Box 2161  
Wichita, Kansas 67201

Re: Towne West Square  
Wichita, Kansas



Dear Eric:

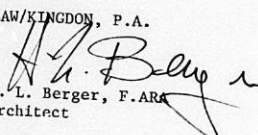
This is to confirm our telephone conversation of this date informing us that there will be no need to relocate the gas easement for subject project as shown on the plat under preparation at this time.

Since the easement is 40' wide and the landscape area only 35' wide, your company will install the gas line within the remaining 5' and thus not interfere in any manner with the planting.

We are all agreeing to the fact that the gas line will be installed prior to any paving in this area.

Very truly yours,

LAW/KINGDON, P.A.

  
H. L. Berger, F.A.R.A.  
Architect

cc 5/12

cc: Mr. Jack Galbraith  
Mr. James R. Schaefer  
Mr. Max Hubbell  
Mr. Joe Bauer  
Mr. Marvin Entz  
Mr. Ron Miller

*Lance*

March 13, 1979

Ms. Jolene M. Grabill  
Legal Aid Society of Wichita, Inc.  
715 Douglas Building  
104 South Broadway  
Wichita, Kansas 67202

Re: Towne West Redevelopment

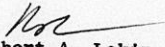
Dear Ms. Grabill:

This is in response to your letter of March 6, 1979 regarding proposed redevelopment of West Kellogg in the vicinity of West Street.

A design study of the Kellogg-West Street interchange is now being prepared by the Design Department of the Kansas Department of Transportation in Topeka. At this time the design calls for the acquisition of the first two houses on the west side of Kessler, and the first two houses on the east side of McComas north of Kellogg. This is necessary so that the existing frontage road can be relocated to the north to allow for an exit ramp along the general alignment of the existing frontage road. The home referred to in your letter, 453 South Kessler, is located north of Taft, and based on information we now have, will not be involved in any of the Kellogg-West Street improvements.

The design study is to be completed in about 90 days at which time a formal public hearing will be held. We have not been provided a specific date as of this time. Notices of the public hearing will be placed in the official newspaper as required by law.

Sincerely,

  
Robert A. Lakin  
Director of Planning

RAL:MLF:rme



LEGAL AID SOCIETY OF WICHITA, INC.

MAIN OFFICE  
715 Douglas Building / 104 S. Broadway  
Wichita, Kansas 67202  
(316) 265-9661

BRIAN J. MOLINE, Director  
DAVID GRAY  
CYNTHIA S. WOELK  
CYD GILMAN

TERENCE MUNDORF  
Reginald Heber Smith  
Fellow

NEIGHBORHOOD OFFICE  
1907 East 21st  
Wichita, Kansas 67214  
(316) 265-4215

DENNIS D. AHLERS, Mng. Attorney  
TONY R. CORTEST

March 6, 1979



Wichita, Sedgwick County Metropolitan Area  
Planning Department  
Advance Planning Division  
City Hall, 10th Floor  
455 North Main  
Wichita, KS 67202

Re: Towne West Redevelopment

Dear Persons:

A client of our office resides at 453 South Kessler Street here in Wichita. It is his understanding that his house and lot are located in an area targeted for highway redevelopment when Towne West is constructed.

Please notify me at the above address regarding the status of redevelopment plans effecting the 400 block of South Kessler, and the dates and time of any public hearing on the matter.

Sincerely,

LEGAL AID SOCIETY OF WICHITA, INC.  
Main Office

Jolene M. Grabill  
Legal Assistant

JMG/gr1

# THE CITY OF WICHITA



DEPARTMENT OF LAW  
OFFICE OF CITY ATTORNEY  
CITY HALL - THIRTEENTH FLOOR  
325 NORTH MAIN STREET  
WICHITA, KANSAS 67202  
(316) 266-4681

March 12, 1979

James R. Schaefer, Esq.  
Mellor, Schaefer & Miller, P.A.  
800 Brown Building  
105 South Broadway  
Wichita, Kansas 67202

Re: Towne West - Reciprocal  
Easement Agreement

Dear Jim:

I have reviewed the construction, operation and Reciprocal Easement Agreement that you furnished to John Dekker. I have also discussed the contents of the Agreement with John Dekker, Bob Lakin and Jack Galbraith. From my review of the Easement Agreement, there appears to be only two sections that are of concern to the City. Those sections are Article 15 pertaining to common areas and Article 24 pertaining to reciprocal easements.

It is my understanding that you have agreed to file the Reciprocal Easement Agreement immediately after the filing of the Amended Towne West plat. I have pointed out to Mr. Lakin that, after the Agreement is filed, under the present terms of the Agreement there is nothing contained therein that would prevent the parties signing the Agreement, if all agreed, from thereafter amending the Articles 15 and 24.

Therefore, the Agreement, particularly as to Articles 15 and 24 of the Reciprocal Easement Agreement, March 1, 1979, revision, is approved as to legal form by the Department of Law, conditioned upon a revision to the Agreement or to the plat being prepared that, in substance, would prevent the parties from amending either of those articles without the consent of the City and conditioned upon the City receiving final copies of all exhibits. I am sure that the City would not object to the placing of conditions on the City's right to withhold consent, such as the City would not be able to unreasonably withhold consent and the City's consent would have to be given within a certain time limit. I will

JOHN DEKKER, Director of Law and City Attorney  
THOMAS H. FUSSELL, Assistant City Attorney





James R. Schaefer  
March 12, 1979  
Page 2

3.

leave the actual drafting of such a revision to you so that the revision can best meet the requirements of the developer and the other parties to the Agreement. The Agreement will be approved as to form at the time the City is furnished with an acceptable revision to the plat or to the Reciprocal Easement Agreement that, in some form, provides that Articles 15 and 24 cannot be amended without the consent of the City and at the time the City is furnished with all of the listed exhibits.

Very truly yours,

*Thomas R. Powell*

Thomas R. Powell  
Assistant City Attorney

TRP:cdh

cc: John Dekker, Director of Law  
Robert A. Lakin, Director of Planning  
Jack H. Galbraith, Chief Planner-Current Plans



March 2, 1979

James R. Schaefer  
800 Brown Building  
Wichita, Ks. 67202

Re: S/D 79-7 - Final plat of Towne West Square Second Addition

Dear Mr. Schaefer:

At the Planning Commission meeting of March 1, 1979, the above referenced plat was approved as recommended by the Subdivision Committee, subject to the conditions as set forth in our letter to you dated February 23, 1979, except for Condition "E" which was amended to state that the instrument submitted was to be approved as by form by the Department of Law.

In addition to complying with those conditions, it is necessary that you meet the following requirements before this plat can be forwarded to the Board of City Commissioners for consideration:

- 3-23-79 *KL* Submission of the fully completed and signed tracing of the subdivision to the Metropolitan Area Planning Department.
- 3-23-79 *KL* Submission of a title report by an abstract or title insurance company or an attorney's opinion that fee title is vested in the plattor.
- 3-23-79 *KL* Certification that all taxes due and payable for 1978 and prior years have been paid.

Please call if you have any questions.

Very truly yours,

Curtis L. Newby  
Junior Planner  
CLN:bh

cc: Towne West Mall Indiana Limited Partnership, P.O. Box 44930  
Indianapolis, Indiana, 46244  
Campbell and Castle, P.O. Box 9262, 67277

Town West

3-1-79

NAME

ORGANIZATION

Don Boetke

Melvin Simon Assoc.

E.H. DENTON

CMD

James R. Schaefer

Atty.

Robert Ziegler

Melvin Simon Assoc.

NORMAN R. NEWMAN

ATTY. - M.S.A.

H.L. BERGER

LAW/KINGDOM, P.A.

Melvin Simon

M Simon Assoc.

Ray Bingham

Dept. of Public Works

Monica L. Lamb

MAPP

Jack H. Galbraith

MAPD

Mike Lindelik

PW Engr

Dick Lewis

"

Bill McKinley

PW Traffic

B. J. Kingdom

LAW/KINGDOM, P.A.

PAUL GRAVES

P.W. T.E.

Pat De Julio

Wilson's Co

Ron Chandler

Wilson & Company

John Decker

City Atty.

February 23, 1979

James R. Schaefer  
800 Brown Bldg.  
Wichita, Kas. 67202

Re: S/D 79-7 - Final plat of Towne West Square Second Addition

Dear Mr. Schaefer:

At the regular meeting of the Subdivision Committee of the Metropolitan Area Planning Commission, February 22, 1979, the above captioned plat was considered. The action of the Committee was to recommend that this plat be approved subject to:

- A. The access control language corrections and other dimension notation errors discussed with the applicant's engineer shall be changed appropriately and indicated on the final plat tracing. *Still incorrect 2.3-30-79*
- B. A 20 foot utility easement shall be indicated on the west line of Lot 4 and on the west 20 feet of the north 10 feet of Lot 3.
- C. A 20 foot utility easement shall be indicated along the south line of Lot 6.
- 3-23-79* D. The applicant's attorney shall submit a letter stating that the original guarantees for improvements such as sanitary sewer, storm sewer, etc., which were approved and accepted with the plat of Towne West Square are still applicable. *submitted but needs OK from Law Dept*
- E. The applicants' attorney shall submit an instrument to be recorded with the plat which shall assure vehicular access between each lot and from each lot to the private ring road, access to parking, utilities access to each lot, and drainage across the lots.
- F. The applicant shall contact Kansas Gas & Electric Co. relative to additional easements to be granted for their service lines.



James R. Schaefer

2-23-79

Page 2

*submitted but needs approval by Law Dept. & M. Kellogg*

G. The applicant shall submit by separate instrument a contingent dedication for right-of-way from the northwest corner of the plat for the proposed Maple/I-235 Interchange. The amount of right-of-way to be contingently dedicated shall be based on the Interchange design recommendation of the consultant's report being completed on the interchange design study. The right-of-way dedication shall be contingent upon need to construct the interchange and Kellogg being reconstructed to a freeway standard. The contingent dedication shall be labeled on the final plat.

H. Recording of the plat within 30 days after approval by the Board of City Commissioners.

Enclosed with the applicant's copy of this letter is a list of the five methods which have been adopted as being acceptable for guaranteeing improvements required in the approval of plats. Forms for the bond and irrevocable letter of credit are available from this office.

The enclosed "marked" copy of the final plat is for your information and files.

This matter will be forwarded to the Planning Commission for its consideration on Thursday, March 1, 1979, at 1:30 p.m. If you have any questions regarding this matter, please call.

Sincerely,

Curtis L. Newby  
Junior Planner

CLN:bh

cc: Towne West Mall Indiana Limited Partnership, P.O. Box 44930  
Indianapolis, Indiana, 46244  
Campbell and Castle, P.O. Box 9262, 67277  
Dean Sellers, Assistant City Engineer

MELLOR, SCHAEFER & MILLER, P. A.  
ATTORNEYS AT LAW  
800 BROWN BUILDING

WICHITA, KANSAS 67202  
TELEPHONE (316) 262-4403

February 20, 1979

PHILLIP MELLOR  
JAMES R. SCHAEFER  
ARDEN P. MILLER  
KIM A. ROBERTS  
  
WILBUR N. JONES  
COUNSEL

R. L. HOLMES (1880-1929)  
W. E. HOLMES (1887-1966)  
JOHN J. DARRAH (1910-1973)  
GEORGE R. COMPTON (1841-1974)

*Curt  
Fildon  
Plat 1-6*

Mr. John Dekker  
Director of Law  
City Building  
455 North Main  
Wichita, Kansas 67202

*Recd  
2/20/79  
MS*

Dear John:

Re: Towne West

In conjunction with the replat of Towne West Addition, there have been discussions between the applicant and the Planning Department relative to some documentation tying the various lots in the new Addition together for assurances of vehicular access, etc., between the lots and the Addition. The exact language of the Planning staff comment is as follows:

"The applicants' attorney shall submit an instrument to be recorded with the plat which shall assure vehicular access between each lot and from each lot to the private ring road, access to parking, utilities access to each lot, and drainage across the lots."

There seems to be some concern on behalf of the staff that one of the lot owners could unilaterally block access to another lot, but as a practical matter this will not occur. In order to insure each of the lots free and unrestricted access to each of the other lots and to the ring road and thus access to a public right-of-way, there will be filed of record a document entitled "Construction, Operation and Reciprocal Easement Agreement" and I am herewith enclosing a copy of such. This, we feel, adequately ties together all of the lots. However, this document cannot be filed of record at the time of the recording of the plat as requested in the staff comment. This document will, undoubtedly, undergo further revision, but will be filed of record, in its entirety, shortly after the conveyance of the lots to the various department store owners.

In order to further assist you in a review of this matter, I am enclosing a copy of the plat of the new Addition.



MELLOR, SCHAEFER & MILLER, P.A.

#2  
February 20, 1979

The Reciprocal Easement Agreement has a further bearing on the replat in that Central Inspection is concerned that to have one owner, a department store, with a direct opening to another owner's land, the Central Mall Area, would be a violation of the Building Code which prohibits openings between two adjacent owners within five feet. We personally feel that this would not be applicable in this situation inasmuch as even though there will be separate owners adjacent to each other, the entire structure will, in effect, be one building the same as Towne East.

To further assist you in reviewing this situation, I am herewith enclosing a Building Site Plan which superimposes the various buildings upon the plat.

*See memo  
to Mr. Lakin  
2/20/79*

With regard to the above quoted staff comment, one of the major concerns of the staff seemed to be that there should be some documentation of record which protects the public's right of free access from being impeded by any one of the lot owners which would, obviously, create an inconvenience to the public. I have not discussed my most recent thoughts relative to this with the staff inasmuch as in thinking the matter through I have concluded that the public has no right to free and unobstructed access between the various lots and parcels. I do plan to discuss this with them at the same time as I deliver all of this matter to you. My thinking is that this is private property under various ownerships and, as above stated, the public has no right to access or free access between the lots. As invitees of the various owners, the public does have free and unobstructed access by virtue of the Reciprocal Easement Agreement and, put in other words, the various owners would be damn fools not to grant as well as receive free access from parcel to parcel. This I now feel is adequately handled through the Reciprocal Easement Agreement and in our opinion, nothing further is required.

In any event, after you have had an opportunity to review this situation, we would appreciate sitting down with you or whoever in your office will be reviewing the matter to further discuss the same.

Yours very truly,

James R. Schaefer, of  
MELLOR, SCHAEFER & MILLER, P.A.

jrs/f  
Enc.

c/ Norman R. Newman  
Robert A. Lakin  
Herb Berger



WICHITA-SEDGWICK COUNTY

*Read*  
DATE 2/15/79

**METROPOLITAN AREA PLANNING DEPARTMENT**

*File  
Towne West*

TO Ray W. Bruggeman, Director of Public Works  
Dick Linn, City Engineer  
Paul Graves, Traffic Engineer  
William McKinley, Assistant Traffic Engineer  
Jack Galbraith, Chief Planner, Current Plans Division  
Willard L. Stockwell, Chief Planner, Advance Plans Division  
Monroe L. Funk, Principal Planner, Advance Plans Division

FROM: Robert A. Lakin, Director of Planning

SUBJECT: MAPLE/I-235 INTERCHANGE

The new plat for Towne West will be before the Subdivision Committee next week Thursday, February 22, 1979. Before the meeting of the Subdivision Committee we should come to some conclusion regarding the Maple Street/I-235 interchange and the problems it presents whether constructed or not. We need to develop a staff position on this matter.

Therefore, I am requesting a meeting on Wednesday, February 21, 1979 at 10:00 a.m. in the MAPD Conference Room to discuss the matter.

\_\_\_\_\_  
Robert A. Lakin  
Director of Planning

RAL:MLF:rh



Final plat  
SUBDIVISION REPORT

SUBDIVISION COMMITTEE  
METROPOLITAN AREA  
PLANNING COMMISSION

S/D NO. 79-7 Name Towne West Square Second Addition  
Date Application Rec'd. 1-16-79 Preliminary Approval 1-25-79  
Scheduled S/D Meeting 2-22-79

DESCRIPTION

General Location An area south of Maple Street and west of Tracy Street

Owner Towne West Mall Indiana Limited Partnership  
Surveyor/Engineer Campbell and Castle  
Address P.O.Box 9262, Wichita, Ks. 67277 Phone 942-8144

- |   |  |
|---|--|
| 1. Gross Acreage of Plat <u>83.694</u>                                      | 7. Lineal Feet of New Streets:             |
| 2. Number of Lots:  | a. <u>None</u> R/W <u>None</u> ft.         |
| Residential <u>None</u>   | b. <u>        </u> R/W <u>        </u> ft. |
| Commercial <u>Eleven</u>  | c. <u>        </u> R/W <u>        </u> ft. |
| Industrial <u>None</u>  | d. <u>        </u> R/W <u>        </u> ft. |
| Other <u>One Reserve</u>  | e. <u>        </u> R/W <u>        </u> ft. |
| Total Number of Lots <u>Twelve</u>  | TOTAL <u>None</u> ft.                      |
| 3. Minimum Lot Frontage <u>N.A.</u> ft.                                     | 8. Sidewalk adjacent to all                |
| 4. Minimum Lot Area <u>N.A.</u> ft.   | streets? <u>X</u> yes <u>        </u> no   |
| 5. Existing Zoning <u>LC</u>  |  |
| 6. Proposed Zoning <u>LC</u>  |  |
| 9. Public Water Supply <u>Yes</u> (Yes-No), Name <u>City of Wichita</u>     |  |
| 10. Public Sanitary Sewers <u>Yes</u> (Yes-No), Name <u>City of Wichita</u> |  |
| 11. Health Department Approval (where applicable) <u>        </u> (Yes-No)  |  |
| 12. City of Wichita <u>X</u> : Three-Mile Area <u>        </u>              |  |

STAFF COMMENTS:

- A. The applicants' engineer shall contact the Planning Department regarding the access control wording in the plat's text.
- B. A 20 foot utility easement shall be indicated along the south line of Lot 6.
- C. The applicant's attorney shall submit a letter stating that the original guarantees for improvements such as sanitary sewer, storm sewer, etc., which were approved and accepted with the plat of Towne West Square are still applicable.
- D. The applicants' attorney shall submit an instrument to be recorded with the plat which shall assure vehicular access between each lot and from each lot to the private ring road, access to parking, utilities access to each lot, and drainage across the lots.
- E. The applicants shall contact the Department of Public Works relative to indicating on the final plat right-of-way for the proposed Maple Street - I-235 interchange based on the consultant's report on the interchange study.
- F. Recording of the plat within 30 days after approval by the Board of City Commissioners.



January 30, 1979

Campbell and Castle  
P.O. Box 9262  
Wichita, Kansas 67277

Re: S/D 79-7 - Preliminary plat of Towne West Square Second Addition

Gentlemen:

At the regular meeting of the Subdivision Committee of the Metropolitan Area Planning Commission, January 25, 1979, the above captioned plat was considered. The action of the Committee was to approve the preliminary and authorize preparation of the final plat, subject to the following:

- A. The applicants and/or their engineer shall contact the City Engineer, Water Department, Kansas Gas and Electric Company, Southwestern Bell Telephone Company and Gas Service Company relative to making satisfactory arrangements for each utility to serve the plat and either indicating on the final plat easements for said utilities or providing a letter from each utility involved stating that arrangements have been made to provide for the utility service to each lot in an acceptable fashion which will not require easements to be shown on the plat.
- B. The applicants' engineer shall contact the Gas Service Company relative to changing the combined 45 foot drainage and utility easement so that the utility easement is separate from the drainage easement on the final plat.
- C. The applicants' attorney shall submit a letter stating that the original guarantees for improvements such as sanitary sewer, storm sewer, etc., and which were approved and accepted with the plat of Towne West Square are still applicable.
- D. The applicants shall submit their revised landscaping plan to the Planning Department for review and approval. Said plan shall indicate the type, specifications, and watering system for the required landscaping adjacent to Maple and the Christ, the King Church. The applicant shall submit appropriate guarantees and agreements as-

uring maintenance of the landscaping by all parcel and/or lot owners.

- E. The applicants' attorney shall submit an instrument to be recorded with the plat which shall assure vehicular access between each lot and from each lot to the private ring road, access to parking, utilities access to each lot, and drainage across the lots.
- F. The south 261.18 feet of the portion of Lot 1 which adjoins Kellogg shall be deleted from the plat since it is not within the area covered by the C.U.P. or the original plat.
- G. The applicants shall contact the department of Public Works relative to indicating on the final plat right-of-way for the proposed Maple Street - I-235 interchange based on the consultant's report on the interchange study.
- H. The applicants shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations.
- I. Requirements for a final plat (see pages 20-25, Part 4, Article 5 of the MAPC Subdivision Regulations).

With regard to condition "B", we have been contacted by George Ecknor of Gas Service Company who has advised that it will satisfy his company's concern if the word "utility" is removed from the labeling of the 45 foot easement. Before making this change on the plat, however, the applicants should check with the City Engineer, K.G. and E., and Southwestern Bell to see if they have any objection to this change.

Enclosed herewith is the "marked" copy of the preliminary plat for your information and files.

If you should have any questions concerning this matter, please call.

Sincerely,

Curtis L. Newby  
Junior Planner

CLN:bh

cc: Towne West Mall Indiana Limited Partnership, P.O. Box  
44930, Indianapolis, Indiana, 46244  
James R. Schaefer, 800 Brown Building, 67202  
Herb Berger, Law/Kingsdon, P.A., 313 S. Market, 67202  
Dean Sellers, Assistant City Engineer



January 29, 1979

Campbell and Castle  
P.O. Box 9262  
Wichita, Kansas 67277

Re: S/D 79-7 Preliminary plat of Towne West Square Second Addition

Gentlemen:

At the regular meeting of the Subdivision Committee of the Metropolitan Area Planning Commission, January 25, 1979, the above captioned plat was considered. The action of the Committee was to approve the preliminary and authorize preparation of the final plat, subject to the following

~~comments~~  
and conditions as further ~~clarified~~ clarified at meeting between the developers representatives and staff at a 1:30 PM meeting on Jan. 29, 1979.

~~Conditions~~

- A. The applicants and/or their engineer shall contact the City Engineer, Water Department, Kansas Gas and Electric Company, Southwest Bell Telephone Company and Gas Service Company relative to making satisfactory arrangements for each utility to serve the plat and either indicating on the final plat easements for said utilities or providing a letter from each utility involved stating that arrangements have been made to provide for the utility service to each lot in an acceptable fashion which will not require easements to be shown on the plat.
- B. The applicants' engineer shall contact the Gas Service Company relative to changing the combined 45 foot drainage and utility easement so that the utility easement is separate from the drainage easement on the final plat.
- C. The applicant's attorney shall submit a letter stating that ~~no additional~~ <sup>the original</sup> guarantees for improvements such as sanitary sewer, storm sewer, etc. will be required by this plat of Towne West Square on which ~~guarantees for improvements~~ <sup>guarantees for improvements</sup> have already been approved and accepted, and which were approved and accepted with the plat of Towne West Square are still applicable.



D

The applicants shall submit their revised landscaping plan to the Planning Department for review and approval. Said plan shall indicate the type, specifications, and

watering system for the required landscaping adjacent to Maple and the Christ, the King Church. The applicant shall submit appropriate guarantees and agreements assuring maintenance of the landscaping by all parcel and/or lot owners.

E

The applicants attorney shall submit an instrument to be recorded with the plat which shall assure vehicular <sup>between each lot and</sup> access from each lot to the private ring road, ~~and~~ access to parking, utilities access to each lot, and drainage across the lots.

F

The south 261.18 feet of the portion of Lot 1 which adjoins Kellogg shall be deleted from the plat since it is not within the area covered by the C.U.P. or the original plat.

G

The applicants shall contact the Department of Public Works relative to indications on the final plat right-of-way for the proposed Maple Street - I 235 interchange based on the consultants report on the interchange study.

H

The applicants shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations.

I

Requirements for a final plat (see pages 20-25, Part 4, Article 5 of the MAPC Subdivision Regulations).

With regards to condition "B", we have been contacted by George Ecknor of Gas Service Company who has advised that ~~if the 45 ft easement is labeled~~ ~~that~~ it will satisfy his company's concern if the word "utility" is removed from the labeling of the 45 ft easement. Before making this change on the plat however, the applicants should check with the City Engineer, ~~and~~ K G & K and Southwest Bell to see if they have any objection to this change.

Enclosed herewith is the "marked" copy of the preliminary plat for your information and files.

If you should have any questions concerning this matter, please call.

*Sincerely,  
Carl L. Hawks  
& Florence*

cc: Towne West Mall Indiana Limited Partnership, P.O. Box 44930  
Indianapolis, Indiana, 46244  
James R. Schaefer, 800 Brown Bldg., 67202  
Dean Sellers, Assistant City Engineer

*Herb Berger, Jans Company*



WICHITA - SEDGWICK COUNTY



METROPOLITAN AREA PLANNING  
DEPARTMENT  
CITY HALL - TENTH FLOOR  
455 NORTH MAIN STREET  
WICHITA, KANSAS 67202  
(316) 268-4561

January 29, 1979

Campbell and Castle  
P.O. Box 9262  
Wichita, Kansas 67277

*Not met via 1/79*

Re: S/D 79-7 Preliminary plat of Towne West Square Second Addition  
Gentlemen:

At the regular meeting of the Subdivision Committee of the Metropolitan Area Planning Commission, January 25, 1979, the above captioned plat was considered. The action of the Committee was to approve the preliminary and authorize preparation of the final plat, subject to the following:

- A. The applicants and/or their engineer shall contact the Engineering Division of the Department of Public Works, utility companies, and the Water Department relative to providing easements for utilities, sewer and water service lines to serve each lot in the plat. If said easements are not to be shown on the final plat, the applicants shall submit to the Planning Department a letter from the Engineering Division, utility companies, and the Water Department stating that the easements need not be shown on the final plat.
- B. The applicants' engineer shall contact the Gas Service Company relative to changing the combined 45 foot drainage and utility easement so that the utility easement is separate from the drainage easement on the final plat.
- C. The applicants' engineer shall be advised that although existing guarantees for improvements submitted on the Towne West Square Addition still appear to be adequate to cover this replat, the Department of Public Works advises that any additional sanitary sewer, drainage, etc., required by this replat, will require additional guarantees.
- D. The applicants shall submit their revised landscaping plan to the Planning Department for review and approval. Said plan shall indicate the type, specifications, and



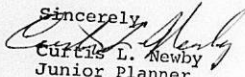
watering system for the required landscaping adjacent to Maple and the Christ, the King Church. The applicant shall submit appropriate guarantees and agreements assuring maintenance of the landscaping by all parcel and/or lot owners.

- E. With the submission of the final plat, the applicants shall submit a letter from the City Traffic Engineer approving the site traffic circulation and parking plan which is presently being reviewed.
- F. The construction, operation and reciprocal easement agreement submitted by the applicants' legal counsel has been forwarded to the City Department of Law for review and comment concerning the provisions for rights of ingress and egress across lots, use of the private ring road and drainage rights across the lots to be held in separate ownership. Yet to be determined is the point at which these covenants containing these provisions are to be recorded.
- G. The south 261.18 feet of the portion of Lot 1 which adjoins Kellogg shall be deleted from the plat since it is not within the area covered by the C.U.P. or the original plat.
- H. Right-of-way will be required from the northwest corner of Lot 10 for the Maple Street I-235 interchange. The final plat shall reflect the appropriate dedication of said right-of-way when the interchange design has been resolved.
- I. Financing the Maple-I-235 interchange will involve the applicants and the guarantee for the applicants' share of the financing will be a requirement of the plat approval.
- J. The applicants shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations.
- K. Requirements for a final plat (see pages 20-25, Part 4, Article 5 of the MAPC Subdivision Regulations).

Enclosed herewith is the "marked" copy of the preliminary plat for your information and files.

If you should have any questions concerning this matter, please call.

Sincerely,

  
Curtis L. Newby  
Junior Planner

CLN:bb

Campbell and Castle Page 3  
1-29-79

cc: Towne West Mall Indiana Limited Partnership, P.O. Box 44930  
Indianapolis, Indiana, 46244  
James R. Schaefer, 800 Brown Bldg., 67202  
Dean Sellers, Assistant City Engineer

January 29, 1979

John Dekker, Director of Law

Robert A. Lakin, Director of Planning

Towne West Square Second Addition, covenants

*Note: this memo not sent - Lakin changed the requirements on this or 12/29/79 after meeting with applicant*

Towne West Square is presently being replatted into 12 lots on which the Towne West shopping center complex is to be constructed. On the original plat, the large mall part of the shopping center was to be constructed on one lot with a private ring road providing traffic circulation and access around the mall, similar to the Towne East Shopping Center. The replat now being processed has broken the large lot into 6 lots so that now the private ring road is crossing individually owned lots. Therefore, as a condition to approval of this replat, the applicants have been required to submit an instrument which will grant the right of access between parking lots and access to the private ring road.

Attached herewith is an instrument submitted by the applicants' attorney, Jim Schaefer, which contains provisions for private access agreements between lots. We have also attached a copy of the replat showing the lots and ring road as submitted to us. We would appreciate your review of the legal instrument and opinion as to whether or not provisions contained therein are sufficient to assure joint useage of parking lots, access from one lot to another and access to the ring road which provides the direct access to public streets. Usually this type of instrument would be recorded with the Register of Deeds as a condition of platting. In this instance, Schaefer wants to record the document when they are ready to request an occupancy permit. Based on our experience in having items completed when commercial uses are ready to occupy their facilities, we feel the instrument should be filed as a condition of platting.

We would appreciate your review of this instrument to determine if it is satisfactory for handling those items of concern and your thoughts as to when it should be recorded.

Sincerely,

Robert A. Lakin  
Director of Planning  
RAL:CLN:bh  
cc: William McKinley, Assistant Traffic Engineer



● ATTENDANCE RECORD ●

Date: 1-29-79  
 Time: 1:30  
 Place: MADP - 10<sup>th</sup> Floor  
 Meeting Arranged By: Berger  
 Purpose: Town West Refilet

Name	Organization	Address
Robt A Lakin Phone:	MADP	
Max Hubbell CAMPBELL & CASTLE Phone: 942-8144	CDC ENGRS	4301 W. IRVING
James R. Schaefer Phone: 262-4403	Atty.	800 Beacon Bldg.
R.W. Linn Phone: 268-4669	Engr. Div. - P.W.	City Hall
Mike Lindahl Phone: 268-4502	Engr Div - PW	City Hall
Ran Bruggeman Phone: 268-4266	Dept. of P.W.	" "
H.L. BERGER Phone: 265-8594	LAW/KINGDON, P.A.	313 S. MARKET
B. J. KINGDON Phone: 265-8584	LAW/KINGDON, P.A.	313 S. MARKET
Mike Weigand Phone: 262-6404	J.P. Weigand & Sons	150N. MARKET
Curt Newby Phone:	MADP	
Galbraith Phone:	MADP	

(OVER.)

- A. - furnish evidence of ~~outlook~~ interlocks at time of plot  
- Build -  
- submit public ~~or~~ ~~write~~

access -  
utility review  
drainage

PW OK's

B. Linn contact letter as to Division

C. Ltr from Shaffer

D. Revised plan in mail to MSA.

\* Check out windfall

E. bill in to Pub. - Take out - Requirement of C.U.P.

F. Change to separate interlock agreement

G - OK.

H. Requests to work w/ public works for dedication ~~land~~.  
on consultant's report.

I - out.

2 Check statements w/ T.E. & MAPD staff  
as to need for interchange

Document needs to guarantee:

1/29/79

1. Public Service Guarantee
2. Easements for travel between parcels -
3. Guarantee to use ring road

1. Interlock the servicing for utilities at the time of platting
2. Build the system to City's standards
3. Record easements after system is built.

1. Vehicular access - loop road and parking
2. All utilities
3. Drainage

Letter to Schafer - acknowledge that plans were submitted and anticipate the administrative adjustments Rd.

#. Contact P.W. relative to the amount of dedication that can be provided relative to the consultant's report.



Preliminary plat  
SUBDIVISION REPORT

SUBDIVISION COMMITTEE  
METROPOLITAN AREA  
PLANNING COMMISSION

S/D NO. 79-7 Name Towne West, Second Addition  
Date Application Rec'd. 1-16-79 SEWAGE Preliminary Approval \_\_\_\_\_  
Scheduled S/D Meeting 1-25-79

DESCRIPTION

General Location An area south of Maple Street and west of Tracy Street

Owner Towne West Mall Indiana Limited Partnership

Surveyor/Engineer Campbell and Castle

Address P.O. Box 9262, Wichita, Ks. 67277 Phone 262-4403

1. Gross Acreage of Plat 83.694
2. Number of Lots:
  - Residential None
  - Commercial Eleven
  - Industrial None
  - Other One Reserve
  - Total Number of Lots Twelve
3. Minimum Lot Frontage N.A. ft.
4. Minimum Lot Area N.A. ft.
5. Existing Zoning LC
6. Proposed Zoning LC
7. Lineal Feet of New Streets:
  - a. None R/W None ft.
  - b. None R/W None ft.
  - c. None R/W None ft.
  - d. None R/W None ft.
  - e. None R/W None ft.
  - TOTAL None ft.
8. Sidewalk adjacent to all streets?  yes  no
9. Public Water Supply Yes (Yes-No), Name City of Wichita
10. Public Sanitary Sewers Yes (Yes-No), Name City of Wichita
11. Health Department Approval (where applicable) \_\_\_\_\_ (Yes-No)
12. City of Wichita  : Three-Mile Area \_\_\_\_\_

STAFF COMMENTS:

- A. This preliminary plat is a replat of Towne West Square Addition. The original plat consisted of 6 commercial lots with an associated approved Commercial Community Unit Plan, DP-71. This new plat proposes to increase the number of lots to 12, however, the applicant is not requesting a change in the approved C.U.P.
- B. The representatives from the Department of Public Works shall be prepared to comment on whether or not the change in the name of the plat and the number of lots and the arrangement of the lots will require new guarantees for paving, sewer, water, or drainage improvements.
- C. The south 261.18 feet of the portion of Lot 1 which adjoins Kellogg shall be deleted from the plat since it is not within the area covered by the C.U.P. or the original plat.
- D. Prior to forwarding of the plat to the City Commission, the applicant shall submit a landscape plan for approval indicating the type, specifications, and watering system for the required landscaping adjacent to Maple and the Christ the King Church. The applicant shall submit appropriate guarantees and agreements assuring maintenance of the landscaping by all parcel and/or lot owners.
- E. The applicant shall submit to the City Traffic Engineer for review and approval, a site traffic circulation and parking plan for the development prior to or at the time of the submission of a final plat.
- F. The applicant shall furnish for recording with the plat, an instrument which will grant the right of access between lots and to the internal private ring road.

Map No.: 5146  
Section No.: 26  
Twp. No.: 27  
Range: 1-W

S/D No. 79-7

APPLICATION FOR SUBDIVISION APPROVAL

Name of Subdivision: SQUARE  
Towne West Second Addition  
General Location: east of Maple Street and Tracy Street

Name of Property Owner: Towne West Mall Indiana Limited Partnership  
Address: P.O. Box 44930, Indianapolis, Indiana 46244 Phone: 317-926-6021  
Name of Subdivider: Same as above  
Address: \_\_\_\_\_ Phone: \_\_\_\_\_  
Name of Agent/Surveyor: James R. Schaefer Phone: \_\_\_\_\_  
Address: 800 Brown Building, Wichita, Kansas 67202  
Date of Application: January 16, 1979 Phone: 262-4403  
ENGINEER: Campbell & Castle P.O. Box 9262 67217

SUBDIVISION INFORMATION:

- Gross Acreage of Plat 83.694 Acres
- Number of Lots:
  - Residential None
  - Commercial Eleven
  - Industrial None
  - Other One ReserveTotal Number of Lots twelve
- Minimum Lot Frontage N.A. ft.
- Minimum Lot Area N.A. ft.
- Existing Zoning LC
- Proposed Zoning LC
- Lineal Feet of New Streets:
  - a. None R/W None ft.
  - b. \_\_\_\_\_ R/W \_\_\_\_\_ ft.
  - c. \_\_\_\_\_ R/W \_\_\_\_\_ ft.
  - d. \_\_\_\_\_ R/W \_\_\_\_\_ ft.
  - e. \_\_\_\_\_ R/W \_\_\_\_\_ ft.TOTAL \_\_\_\_\_ None ft.
- Sidewalk adjacent to all streets?  yes \_\_\_\_\_ no
- Public Water Supply Yes (Yes-No), Name City of Wichita
- Public Sanitary Sewers Yes (Yes-No), Name City of Wichita
- Health Department Approval (where applicable) \_\_\_\_\_ (Yes-No)
- City of Wichita  Three-Mile Area

The owner herein agrees to comply with the Subdivision Regulations for the Wichita-Sedgwick County Metropolitan Area, as approved, and all other pertinent ordinances of the City of Wichita and/or Resolutions of Sedgwick County, Kansas, and Statutes of the State of Kansas. He further agrees that he waives the 60-day statutory period in which the Planning Commission or governing body must act. In addition, it is agreed that all costs of recording the plat and supplemental documents thereto with the Register of Deeds, as well as all costs of publication of initiating resolutions approving any petition for improvements, such as streets, sewer, sidewalks, etc. shall be assumed and paid by the owner when billed. The undersigned further states that he is the owner of the property proposed for platting.

Owner's Signature: By James R. Schaefer  
TOWNE WEST MALL COMPANY, an Indiana Limited Partnership  
and WESTWOODS MALL ASSOCIATES, INC.  
James R. Schaefer, Attorney

Wichita-Sedgwick County Metropolitan Area  
Planning Commission, 10th Floor, City Hall,  
455 North Main, Wichita, Kansas 67202.

Received by Paul Henry  
Date 1/16/79  
Fee Submitted \$3.00

FORM 29 1

PAYMENT NOTICE  
City of Wichita

Bldg.	Use of Str.	Code Bks	Copies
Elec	Elev. Insp.	Hse Moving	Lic.
Mech	Boiler Insp.	Fav. Cuts	Cert.
Pibg	Exam Fees	Sewer	Elev.
Signs	Plan Rev. (P.W.)	Cement	M.S.P.

Planning

\$43.00

DESCRIPTION	AMOUNT
<i>Sub-urban</i>	

NAME

ADDRESS

FUND

DUE DATE

COMMENTS

DATE

BY



~~Victory~~

2 copies of everything  
paper-clipped for  
Doug-Masler &  
(attorney)

WICHITA-SEDGWICK COUNTY

**METROPOLITAN AREA PLANNING DEPARTMENT**

DATE  
January 29, 1979

TO John Dekker, Director of Law  
FROM Robert A. Lakin, Director of Planning  
SUBJECT Towne West Square Second Addition, covenants

copy 911

Towne West Square is presently being replatted into 12 lots on which the Towne West shopping center complex is to be constructed. On the original plat, the large mall part of the shopping center was to be constructed on one lot with a private ring road providing traffic circulation and access around the mall, similar to the Towne East Shopping Center. The replat now being processed has broken the large lot into 6 lots so that now the private ring road is crossing individually owned lots. Therefore, as a condition to approval of this replat, the applicants have been required to submit an instrument which will grant the right of access between parking lots and access to the private ring road.

Attached herewith is an instrument submitted by the applicants' attorney, Jim Schaefer, which contains provisions for private access agreements between lots. We have also attached a copy of the replat showing the lots and ring road as submitted to us. We would appreciate your review of the legal instrument and opinion as to whether or not provisions contained therein are sufficient to assure joint useage of parking lots, access from one lot to another and access to the ring road which provides the direct access to public streets. Usually this type of instrument would be recorded with the Register of Deeds as a condition of platting. In this instance, Schaefer wants to record the document when they are ready to request an occupancy permit. Based on our experience in having items completed when commercial uses are ready to occupy their facilities, we feel the instrument should be filed as a condition of platting.

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Sincerely,

Robert A. Lakin  
Director of Planning  
RAL:CLN:bh  
cc: William McKinley, Assistant Traffic Engineer

*Did we get a  
Revised original  
draft from  
Schaefer? ?*

*JH*

*Film 359 Pg 1063*

TOWNE WEST SQUARE  
WICHITA, KANSAS

CONSTRUCTION, OPERATION AND  
RECIPROCAL EASEMENT AGREEMENT

Draft	October 25, 1977
Revised	April 24, 1978
Revised	July 25, 1978
Revised	September 22, 1978
Revised	October 20, 1978
Revised	December 15, 1978
Revised	January 10, 1979

*April 3, 1979 letter to BCC promising to keep the ring road as is  
or provide alternate access to the parcels is filed on Film 359 Pg 1187.*



TOWNE WEST SQUARE  
WICHITA, KANSAS

CONSTRUCTION, OPERATION AND  
RECIPROCAL EASEMENT AGREEMENT

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Exhibit "G"	Developer Tract Legal Description
Exhibit "H"	Future Department Store Tract Legal Description
Exhibit "I"	Total Development Tract Legal Description
Exhibit "J"	Reserve Tracts Legal Descriptions
Exhibit "K"	Survey
Exhibit "L"	Sign Criteria



TOWNE WEST SQUARE  
WICHITA, KANSAS

CONSTRUCTION, OPERATION AND  
RECIPROCAL EASEMENT AGREEMENT

THIS CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT (hereinafter called "Operating Agreement") dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 197\_\_\_\_, by and among TOWNE WEST MALL COMPANY, an Indiana 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 Kansas, having its principal office at 1301 Avenue of the Americas, New York, New York, 10019 ("Penney"), and MONTGOMERY WARD DEVELOPMENT CORPORATION, a Delaware corporation ("Ward Development"), and MONTGOMERY WARD & CO., INCORPORATED, an Illinois corporation ("Montgomery Ward"), each authorized to do business in the State of Kansas, and each having an office at One Montgomery Ward Plaza, Chicago, Illinois, 60671 (Ward Development and Montgomery Ward being hereinafter referred to collectively and jointly and severally as "Ward"), and CONSTRUCTION DEVELOPERS, INCORPORATED, an Arkansas corporation, qualified to do business in the State of Kansas, 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 Kansas, having its principal office at 900 West Capitol Avenue, Little Rock, Arkansas, 72203 ("DDSI") (Condev and DDSI being hereinafter referred to collectively and jointly and severally as "Dillard", provided, however, that after completion of construction of the Dillard Improvements on the Dillard Tract as hereinafter defined and provided, the reference to "Dillard" in Part Two, "Operation Article," of this Operating Agreement shall mean and include only DDSI except when Condev is in actual possession of the Dillard Tract, during which time it shall mean both DDSI and Condev as aforesaid, but provided further that both DDSI and Condev shall at all times be and remain jointly and severally bound, liable and obligated, except as provided above, upon all of their covenants and obligations hereunder and for the performance thereof), and H. J. WILSON CO., INC., a Louisiana corporation, qualified to do business in the State of Kansas, having its principal office at 5825 Florida Boulevard, Baton Rouge, Louisiana, 70806 ("Wilson").

WITNESSETH:

THAT, WHEREAS, Developer, Penney, Ward Development, Condev and Wilson each own in fee a portion of a certain parcel of land containing \_\_\_\_\_ acres, situated in the County of Sedgwick and State of Kansas, shown on the Plot Plan annexed hereto as Exhibit "A" and described in Exhibit "B" annexed hereto ("Shopping Center Tract"); and

WHEREAS, that portion of the Shopping Center Tract owned by Penney containing \_\_\_\_\_ acres is shown on Exhibit "A" and described in Exhibit "C" annexed hereto ("Penney Tract"); and

WHEREAS, that portion of the Shopping Center Tract owned by Ward Development containing \_\_\_\_\_ acres is shown on Exhibit "A" and described in Exhibit "D" annexed hereto ("Ward Tract"); and

WHEREAS, that portion of the Shopping Center Tract containing \_\_\_\_\_ acres is shown on Exhibit "A" and described in Exhibit "E" annexed hereto ("Dillard Tract") which is owned by Condev and to be leased to DDSI (by Condev, or as a part of a sale-leasehold financing of the Dillard Tract) for a term extending beyond the term of this Operating Agreement; and

WHEREAS, that portion of the Shopping Center Tract owned by H. J. Wilson Co., Inc., containing \_\_\_\_\_ acres is shown on Exhibit "A" and described in Exhibit "F" annexed hereto ("Wilson Tract"); and

WHEREAS, that portion of the Shopping Center Tract owned by Developer containing \_\_\_\_\_ acres is shown on Exhibit "A" and described in Exhibit "C" annexed hereto ("Developer Tract"); and

WHEREAS, that portion of the Shopping Center Tract owned by Developer containing \_\_\_\_\_ acres is shown on Exhibit "A" and described in Exhibit "H" annexed hereto ("Future Department Store Tract"); and

WHEREAS, the Parties hereto desire to develop and improve the Developer Tract and each Department Store Tract and the Future Department Store Tract as an integrated, first class, regional shopping center, and to operate such Shopping Center on said Shopping Center Tract, all in accordance with the terms of this Operating Agreement; and

WHEREAS, certain parcels of land situated on the Total Development Tract (as hereinafter defined and as described in Exhibit "I" annexed hereto) and so shown on Exhibit "A" are owned by Developer and may not be developed by Developer as part of the Shopping Center Tract but, instead, may be reserved for future development ("Reserve Tracts"), which Reserve Tracts are described in Exhibit "J" annexed hereto; and

WHEREAS, the Total Development Tract and all easements affecting the same and all rights of way abutting the same are shown on the Survey annexed hereto as Exhibit "K"

WHEREAS, Developer desires to construct and lease certain buildings for retail and commercial occupancy (hereinafter sometimes called the "Developer Buildings") and to construct and operate certain Common Area and an Enclosed



Mall (both as hereinafter defined) on the Developer Tract (said Buildings, Common Area and Enclosed Mall being hereinafter sometimes called the "Developer Improvements") all as located and designated on Exhibit "A"; and

WHEREAS, Developer will construct certain Common Area on the Department Store Tracts; and

WHEREAS, Penney desires to construct and operate, or cause to be operated, a retail department store in one or more buildings, or installations and related facilities (hereinafter sometimes called the "Penney Building") on the Penney Tract, and to provide for and permit the construction of certain Common Area by the Developer on the Penney Tract as hereinafter provided (said Penney Building and Common Area on the Penney Tract being hereinafter sometimes called the "Penney Improvements") all as located and designated on Exhibit "A" and

WHEREAS, Ward desires to construct and operate, or cause to be operated, a retail department store in one or more buildings, or installations and related facilities (hereinafter sometimes called the "Ward Building") on the Ward Tract, and to provide for and permit the construction of certain Common Area by the Developer on the Ward Tract as hereinafter provided (said Ward Building and Common Area on the Ward Tract being hereinafter sometimes called the "Ward Improvements") all as located and designated on Exhibit "A"; and

WHEREAS, Dillard desires to construct and operate, or cause to be operated, a retail department store in one or more buildings, or installations and related facilities (hereinafter sometimes called the "Dillard Building") on the Dillard Tract, and to provide for and permit the construction of certain Common Area by the Developer on the Dillard Tract as hereinafter provided (said Dillard Building and Common Area on the Dillard Tract being hereinafter sometimes called the "Dillard Improvements") all as located and designated on Exhibit "A"; and

WHEREAS, Wilson desires to construct and operate a specialty department store in a building (hereinafter sometimes called the "Wilson Building") on the Wilson Tract, and to provide for and permit the construction of certain Common Area by the Developer on the Wilson Tract as hereinafter provided (said Wilson Building and Common Area on the Wilson Tract being hereinafter sometimes called the "Wilson Improvements") all as located and designated on Exhibit "A"; and

WHEREAS, in order to make use of their Tracts as an integrated, first-class, regional shopping center, Developer, and each Department Store, respectively, desire to exchange with each other certain easements in, to, over, under, upon and across the Total Development Tract and to make certain other covenants and agreements, all as hereinafter provided and more specifically set forth:

NOW, THEREFORE, for valuable consideration, paid by each Party to the other, the receipt and sufficiency of which is hereby acknowledged, and in further consideration of the mutual covenants and agreements herein contained, with the Parties intending to be legally bound hereby, it is contracted and agreed as follows, to-wit:



### Definitions

As used in this Operating Agreement, the following words and phrases, appearing substantially in the order in which each relates to the others, shall mean:

- 1 "Party" - each separate principal business entity now or hereafter making, entering into and signing this Operating Agreement, and now or hereafter owning or having a leasehold estate in one or more of the Tracts situated within the Shopping Center Tract; whether or not such business entity is an individual, or individuals (that is, natural person, or persons), a partnership (general or limited), a joint venture or corporation; being either Developer or any Department Store; or any successor to any such business entity permitted under the provisions of this Operating Agreement, and being referred to collectively herein as "Parties".
- 2 "Major Department Store" - the Parties to this Operating Agreement designated, respectively, "Penney", "Ward", and "Dillard", as well as any other entity hereafter becoming a party hereto, i.e., any "Future Major Department Store", as hereinafter provided in Section 4.4 of this Operating Agreement, occupying more than 80,000 square feet of Gross Leasable Area and containing a number of departments for the sale of hard and soft goods and miscellaneous merchandise and services.
- 3 "Department Store" - all Parties to this Operating Agreement, except Developer.
- 4 "Mall Tenant" - any Occupant other than a Department Store, occupying Gross Leasable Area in the Developer Building.
- 5 "Tract" - the land (situated within the Total Development Tract) belonging to any Party hereto; as well as all of the land comprising the Total Development Tract.
- 6 "Developer Tract" - land belonging to Developer, being the Shopping Center Tract less each Department Store Tract and the Future Department Store Tract; and being fully described by metes and bounds on Exhibit "G" and as shown on the Plot Plan, Exhibit "A"; provided, however, that until such time as the Future Department Store Tract is conveyed to a Future Department Store, it shall be deemed to be a part of the Developer Tract, except as otherwise expressly provided herein.
- 7 "Department Store Tracts" - land belonging to each Department Store; being the Shopping Center Tract less the Developer Tract; and consisting of the Penney Tract, the Ward Tract, the Dillard Tract, the Wilson Tract and the Future Department Store Tract (if and when conveyed to a Future Department Store), each being fully described by metes and bounds on Exhibits "C", "D", "E", "F" and "H", respectively, all as shown on the Plot Plan, Exhibit "A".
- 8 "Shopping Center Tract" - the land containing the Developer Tract and all Department Store Tracts (including the Future Department Store Tract), and being fully described by metes and bounds on Exhibit "B", and as shown on the Plot Plan, Exhibit "A".

- 9     "Reserve Tracts" - land belonging to Developer, other than the Developer Tract and Future Department Store Tract, if any, which may not be developed by Developer as part of the Shopping Center but upon which Developer contemplates the construction of certain Improvements in the future, said Tracts being situated within the Total Development Tract as component Tracts thereof and being fully described by metes and bounds on Exhibit "J" and shown on Exhibit "A".
- 10    "Total Development Tract" - the land containing the Shopping Center Tract and Reserve Tracts; all of which is fully described by metes and bounds on Exhibit "I", and as shown on the Plot Plan, Exhibit "A".
- 11    "Improvements" - all improvements to land of every nature and kind, including underground utility installations, upon the Total Development Tract or the Shopping Center Tract, or any other component Tract thereof, including the Common Area, the Enclosed Mall, the Buildings, the Outdoor Selling Area, if any, landscaped areas, including the landscaping, if any, between the exterior perimeter wall of Buildings and the Building Perimeter Sidewalk.
- 12    "Shopping Center" - the Shopping Center Tract and all Improvements situated thereon.
- 13    "Plans and Specifications" - complete architectural and engineering drawings and written requirements for the construction of Improvements; including working drawings, Design Criteria and written requirements for workmanship and materials, all of which show details adequate for the commencement and pursuit of actual construction, as well as for a reasonable estimate of the cost thereof, and all of which are incorporated herein and made a part hereof by reference in Paragraph 2.3 of this Operating Agreement.
- 14    "Design Criteria" - drawings, design details, material samples or renderings (including front and side elevations and perspectives, both exterior and interior of the Common Area, the Enclosed Mall, the Buildings, and the Outdoor Selling Area, if any, and the landscaping, if any, between the exterior perimeter wall of Buildings and the Building Perimeter Sidewalk) that show the general appearance to be anticipated in certain Improvements to be constructed.



- 15 "Plot Plan" - diagram or drawing that shows the general nature, size, location and/or shape of:
- (a) the Total Development Tract (including the Shopping Center Tract and each other component Tract of said Total Development Tract) and its property lines or boundaries;
  - (b) the Improvements situated, or to be situated on the Total Development Tract, including the Permissible Building Areas, the Building Perimeter Sidewalk, the Common Area, the Enclosed Mall, the Buildings, service courts and truck loading docks, and the Outdoor Selling Area, if any; and
  - (c) adjoining and/or nearby public streets and highways;
- and being attached hereto as Exhibit "A".
- 16 "Permissible Building Area" - the land within the Total Development Tract upon which a designated Party may construct either its initial Building, or any future expansion thereof, or its future Building, as provided in this Operating Agreement, and as shown on the Plot Plan, Exhibit "A". Unless otherwise expressly shown and indicated on the Plot Plan, the Permissible Building Area on each Party's Tract is the portion of each Party's Tract upon which such Party's Building is shown on the Plot Plan, and the Reserve Tracts. The Permissible Building Area on each Reserve Tract shall consist of the entire Reserve Tract, subject to the provisions of Paragraph 4.1(4) of this Operating Agreement.
- 17 "Building Perimeter Sidewalk" - sidewalks adjoining either: (1) the exterior perimeter walls of the Buildings situated upon the Shopping Center Tract, or (2) landscaping adjacent to the exterior perimeter walls of said Buildings, and within the curb line of such sidewalks, all as shown on the Plot Plan, Exhibit "A".
- 18 "Building" - all Improvements to and upon the Total Development Tract, excluding underground utility installations, the Common Area, the Enclosed Mall, the Outdoor Selling Area, if any, the landscaping, if any, between the exterior perimeter walls of Buildings and the Building Perimeter Sidewalk.
- 19 "Common Building Component" - any structural part of a Building, such as footings, foundations, supports, walls and roofs located on more than one component Tract situated within the Total Development Tract.
- 20 "Common Area" - certain improved portions of the Shopping Center Tract which are for the general use, convenience and benefit of all the Parties hereto and all Occupants (and their respective tenants, sub-tenants, customers, employees, concessionaires and other Permittees) and not Floor



Area intended for the exclusive use and occupancy of an Occupant (and its customers, concessionaires and other Permittees) including, but not limited to:

- (1) Parking Areas and individual Parking Spaces for motor vehicles, including multi-level Parking Spaces, if any, provided that there shall be no multi-level Parking Areas without the approval of all Parties;
  - (2) roadways (including ring road, if any, as shown on Plot Plan, Exhibit "A"), driveways, aisles, islands, private streets, entrances and exits to and from public roadways and streets to provide vehicular access and ingress and egress to and from Parking Areas;
  - (3) sidewalks (including, without limitation, Building Perimeter Sidewalks), walkways and exterior stairways to provide pedestrian access;
  - (4) ramps, truckways, loading areas, delivery passages, truck tunnel and service corridors connecting therewith; except as located within any Building belonging to any Department Store which is a Party hereto;
  - (5) landscaped and exterior planted areas, excluding landscaped and exterior planted areas, if any, between the exterior perimeter walls of Buildings and the curb line of the Building Perimeter Sidewalks;
  - (6) curbs, lighting standards, paving, traffic and directional signs and traffic stripings and markings, as located upon the Shopping Center Tract;
  - (7) all Common Utility Facilities serving, or used by, more than one Party hereto;
  - (8) outside courts and courtyards;
  - (9) public stairways, escalators, bus stops and public service corridors; and
  - (10) the Enclosed Mall, except as otherwise provided in this Operating Agreement;
- in the Shopping Center, all as shown on the Plot Plan, Exhibit "A", but excluding:
- (a) any portions of the Shopping Center Tract, which may, from time to time, be occupied by any duly dedicated public street or highway;
  - (b) such portions of the Shopping Center Tract, as may be, from time to time, exclusively appropriated for use as permanent or temporary Outdoor Selling Area, if any, as indicated on Exhibit "A";

- (c) such portions of the Shopping Center as shall comprise the areas and spaces in the Developer Building and in any Building belonging to any Department Store which is a Party hereto; and
- (d) existing and permissible kiosks as shown on the Plot Plan, Exhibit "A".
- 21 "Common Utility Facilities" - storm drainage systems, gas pipe lines, water pipe lines, sewer lines, fire protection systems, underground and overhead power and telephone cables and similar utilities serving the Shopping Center Tract, including both on-site installations and off-site installations necessary to connect to existing or available municipal or other public or quasi-public utility facilities, but excluding facilities designed and installed for the exclusive use of a Party or which are within five feet (5') from such Party's Building. It is understood and agreed that the existing off-site utility lines, if any, as shown on Exhibit "K" and existing on-site perimeter utility lines may be overhead, but that the on-site extensions thereof shall be underground.
- 22 "Parking Area" - the land area within the Shopping Center Tract intended for the use of permitting automobiles (including other licensed motor vehicles) to enter into, park upon and exit from said Tract; and the Improvements thereon, that is, the paved area to be occupied by parked motor vehicles, the paved area used for bays, aisles, driveways, entrances and exits, including multi-level parking decks and ramps, if any, and landscaped areas and sidewalks, all of which are located upon said land and within the areas designated for parking on the Plot Plan, Exhibit "A"; provided, however, that there shall be no multi-level parking without the approval of all Parties.
- 23 "Parking Space" - the paved land area marked by painted striping for the use of permitting one automobile to be situated and parked thereon, within the Parking Area, as shown on Exhibit "A", Parking Layout.
- 24 "Outdoor Selling Area" - the land, being a portion of the Shopping Center Tract and any Improvements situated thereon, that may be, from time to time, exclusively appropriated for permanent or temporary outdoor selling, as designated on the Plot Plan, Exhibit "A", or as agreed upon later by consent of all the Parties hereto; said Outdoor Selling Area being exclusive of the Common Area, the Enclosed Mall, and the Buildings and the landscaping, if any, between the exterior perimeter wall of Buildings and the Building Perimeter Sidewalk situated upon the Shopping Center Tract.



25 "Enclosed Mall" - (sometimes herein called "Mall" when the context requires "Mall" to mean "Enclosed Mall") the land being a portion of the Developer Tract and the Improvements situated thereon, designated as "Enclosed Heated & A/C Mall" on the Plot Plan, Exhibit "A", including, without limitation, covered and roofed malls, courts and arcades on one (1) level, all of which are mechanically heated and air conditioned for climatic control; but excluding those areas and Improvements designated or used as kiosks or boutiques (or otherwise, occupied as Floor Area for income producing purposes) and service corridors and public restrooms that are part of the Common Area.

26 "Floor Area" - the space in a horizontal plane occupied by the surface of each floor within a completed Building and the space in a horizontal plane occupied by the surface of each floor within a completed kiosk, boutique or similar income producing Improvements within or without a Building; said space being measured in square feet determined by the linear dimensions in feet from the outside of the exterior Building perimeter walls to the outside of the exterior Building perimeter walls (except party walls as to which the center thereof, instead of the exterior faces thereof, shall be used) including any such space covered by:

- (1) basements and other similar subterranean areas;
- (2) balconies and mezzanines, other than additional space created by fixture installations designed to increase the usability of space exclusively for stock or storage purposes;
- (3) walls and columns;
- (4) elevators, dumb waiters, stairs, escalators and conveyors;
- (5) Outdoor Selling Area, if any; and
- (6) all other similar spaces located within the exterior facade of the exterior perimeter walls;

but excluding any such space covered by:

- (a) the Enclosed Mall;
- (b) electrical and/or mechanical equipment rooms and/or penthouses used to serve any Occupant;
- (c) transformer room or vault;
- (d) junk tire or rubbish storage spaces;
- (e) trash and rubbish storage and/or bailing rooms;



- (f) paved or concrete aprons (whether or not covered by canopies) and gasoline pump islands located at any Tire, Battery and Accessory (TBA) automotive service station;
- (g) sheds used exclusively for Common Area maintenance purposes;
- (h) truck docks, except to extent permitted in leased premises under a lease agreement wherein Developer is "landlord";
- (i) decked storage areas above floor level; and
- (j) public fire corridors required by safety fire codes or similar public laws, used exclusively for emergency exits;

and the said Floor Area, including future additions thereto, of each Party hereto shall be certified by said Party's architect to the other Party; provided that any dispute about such certification shall be submitted to arbitration under the provisions of the Article on Arbitration contained in this Operating Agreement.

27 "Gross Leasable Area" - Floor Area intended for the exclusive use and occupancy of an Occupant, prospective or actual, measured in square feet, determined by the linear dimensions in feet, from the center of joint partitions, party or interior walls (or the outside of the exterior Building perimeter walls, as applicable) to the center of joint partitions, party or interior walls (or the outside of the exterior Building perimeter walls, as applicable); excluding any Floor Area:

- (1) in any public meeting hall or auditorium that is neither leased by an Occupant nor owned by any Department Store, not to exceed 3,000 square feet;
- (2) in any public restroom that is neither leased by an Occupant nor owned by any Department Store; and
- (3) in Shopping Center management offices and storage and in Merchants Association offices, all of which is not to exceed a total of 5,000 square feet;

and the said Gross Leasable Area, including future additions thereto, of each Party hereto shall be certified by said Party's architect to the other Party, provided that any dispute about such certification shall be submitted to arbitration under the provisions of the Article on Arbitration contained in this Operating Agreement.

28 "Occupant" - any person or legal entity, including any Party hereto, who is legally entitled to the exclusive use and occupancy of any Gross Leasable Area under the rights contained in a deed or a written lease agreement.

- 29 "Permittee" - any Occupant, and any officer, director, partner, employee, agent, contractor, customer, visitor, patient, client, invitee, licensee, subtenant, or concessionaire of any Occupant.
- 30 "Supplemental Agreement" - the separate agreement executed simultaneously herewith by each Department Store setting forth certain understandings and agreements between Developer and each Department Store not set forth herein, containing, among others, specifications of such Department Store's share of and method of allocation of various expenses of the Shopping Center construction, operation and maintenance.
- 31 "Opening Date" - as defined in Paragraph 3.2 of this Operating Agreement.
- 32 "Off-Site Work" - the following installations and facilities to be constructed and installed by Developer (or caused by the Developer to be constructed and installed) or by the governmental agency or authority having jurisdiction thereof, adjacent to and in the immediate vicinity of the Total Development Tract, in connection with the construction of the Shopping Center, to-wit:
- (a) a water line(s) running to the property line of the Total Development Tract which shall connect to a municipal or other public or quasi-public water facility, and which shall comply with all governmental regulations, and provide a degree of reliability, rate of flow, and pressure necessary for the full enjoyment of the Improvements to be erected upon the Shopping Center Tract, as provided by this Operating Agreement, and the operation of such fire protection systems as may be required by law or Factory Mutual;
  - (b) a sanitary sewer line(s) running to the property line of the Total Development Tract which shall connect to a municipal or other public or quasi-public sewage facility, and which shall comply with all applicable governmental regulations and shall be adequate to handle sewage from the Improvements to be erected on the Shopping Center Tract, as provided by this Operating Agreement;
  - (c) a storm sewer line(s) running to the property line of the Total Development Tract, adequate to handle and dispose of storm water from the Shopping Center Tract;
  - (d) gas (if available) and electric lines running to the property line of the Total Development Tract of sufficient capacity to service the Improvements to be erected on the Shopping Center Tract, as provided by this Operating Agreement;



- (e) telephone lines running to the property line of the Total Development Tract;
  - (f) such periphery roads, access roads, ramps, means of ingress and egress, and other street improvements, traffic control devices and signalization as are shown on the Plot Plan (Exhibit "A") and Plans and Specifications or as may be mutually agreed upon by the Parties, including, without limitation, the widening and improvement of Tracy, Taft and Maple Streets, and Kellogg Avenue (U.S. 54) as shown on the Plans and Specifications and Plot Plan.
- 33 "Site Preparation Work" - the work to be done by Developer on the Shopping Center Tract in order to prepare the same for construction of Buildings and other Improvements, as more particularly provided in subparagraph 2.2A(1).
- 34 "On-Site Work" - Site Preparation Work and construction and installation of Common Area Improvements and Common Utility Facilities by Developer as more particularly provided in Paragraph 2.2A.



PART ONE

CONSTRUCTION

Article 1 Cooperation

Paragraph

1.1 Recognizing that the performance of Site Preparation Work and the construction of Improvements by any one Party may or will reasonably be expected to affect performance of Site Preparation Work and the construction of Improvements by each other Party, each Party shall cause its architect, contractors and others engaged in such work or construction to cooperate with each other to the extent reasonably possible and to schedule and execute such work and construction in such manner and at such times as will minimize the interruption thereof, or obstruction to, the respective work and construction of each Party.

1.2 Each Party shall take all necessary safety measures, including, but not by way of limitation, the erection of barricades (which shall be kept free of offensive advertising matters) as shall be reasonably required to protect persons performing such work or construction, as well as each Party and all Permittees, from injury or damage caused by, or resulting from, any work or construction performed by or on behalf of each Party.

1.3 Each Party shall use its best efforts not to unduly interfere, during the course of said work and construction, with the business operations, if any, being conducted in the Shopping Center. In the performance of such work and construction, each Party shall comply with all effective and applicable laws and ordinances.

1.4 Each Party shall cooperate with each other Party in planning and approving any Common Utility Facilities and any public improvements to serve the Shopping Center Tract, such as public utility (either operated or regulated by government), water drainage, street and road improvements, and all similar off-site improvements without the Shopping Center Tract (including traffic signal lights, rights-of-way and any and all public easements) to be made on, or adjacent to, or without, the Shopping Center Tract.

1.5 Prior to the commencement of any On-Site Work upon any part of the Shopping Center Tract, Developer shall submit all engineering and/or architectural designs and all Plans and Specifications, and any modifications thereto for such On-Site Work to each Department Store for approval as hereinafter provided. All such work and construction shall comply with the approved Plans and Specifications.

1.6 Approval of any matter pertaining to such work, construction or public improvements to be made by a Party hereto under either the provisions of this Operating Agreement or the requirement of a governmental authority shall be made by a representative of such Party as follows:

For Developer: Mr. Robert Zigler  
Project Manager  
Melvin Simon & Associates, Inc.  
1712 North Meridian Street  
Indianapolis, Indiana 46202

For Penney: J. C. Penney Properties, Inc.  
Attention: Phil Flad  
Real Estate Department  
P. O. Box 2405  
Dallas, Texas 75221

For Ward: Montgomery Ward Development Corporation  
Attention: Regional Engineering Manager  
6200 St. John Avenue  
Kansas City, Missouri 64123, and  
  
Montgomery Ward & Co., Incorporated  
Attention: Secretary  
Post Office Box 8339  
Chicago, Illinois 60680

For Dillard: Mr. William Dillard, II  
Dillard Department Stores, Inc.  
Post Office Box 486  
Little Rock, Arkansas 72203, and  
  
Mr. Joseph Story  
Director of Construction  
Dillard Department Stores, Inc.  
Post Office Box 486  
Little Rock, Arkansas 72203

For Wilson: Mr. Charley Dennison  
Director of Construction  
H. J. Wilson Co., Inc.  
Post Office Box 66221  
Baton Rouge, Louisiana 70896

subject to the right of each Party to designate a different representative by notice given pursuant to "General Article 35 Notices". Such approvals shall not be unreasonably denied, withheld or delayed by any Party in any case.

1.7 Notwithstanding any other provisions in this Operating Agreement, Developer shall be responsible (as an independent contractor) for the performance, supervision and management of certain work and construction within, upon and about the Shopping Center Tract (even though a portion of said work is being paid for by a Party hereto pursuant to a Supplemental Agreement), to-wit:

- (a) Site Preparation Work (excluding excavation for Building floor levels below first floor level);



(b) On-Site Work; and

(c) Off-Site Work,

all as hereinafter more particularly provided in Paragraph 2.2 hereof, which work and construction shall be performed under a contract or contracts by and between the Site Preparation Work and Common Area contractor or contractors and Developer. Said contracts shall include architectural and engineering Plans and Specifications approved by the Developer and the Department Stores. Each Party shall have the right, during the time such work or construction is performed, to inspect and approve such work or construction. Developer shall make all payments of money due said contractors from time to time, it being understood and agreed that each Department Store shall reimburse Developer promptly for its share of the cost of all such work as provided in Supplemental Agreements of even date herewith. Developer shall arrange to have the On-Site Work construction contractor furnish each Department Store with "as-built" plans, showing the location of Common Utility Facilities (and described by metes and bounds) upon the Tract of each said Department Store.

1.8 Law/Kingdon, P.A., 313 South Market Street, Wichita, Kansas, 67202, shall serve as Project Engineer. The fees, charges and expenses of the Project Engineer, insofar as they relate to the On-Site Work and Off-Site Work for the entire Shopping Center Tract and each component Tract thereof, shall be borne and paid by each of the Parties hereto in accordance with the provisions of the Supplemental Agreements. Developer shall pay such fees, charges and expenses of the Project Engineer subject to reimbursement in accordance with the provisions of the Supplemental Agreements. The Project Engineer's duties shall include, but not be limited to the following: (1) preparation of all On-Site Work and Off-Site Work Plans and Specifications, (2) responsibility for inspection of On-Site Work and Off-Site Work as to compliance with Plans and Specifications approved by the Parties, (3) coordination of all work with various utilities and governmental agencies, (4) coordination of all work with the various Parties to this Operating Agreement, (5) issuance of minutes of various On-Site Work meetings through the Developer to all Parties, (6) review all testing reports for compliance with Plans and Specifications and advise all Parties in the event any installation is not made in accordance with the approved Plans and Specifications, (7) provide each Party with a complete set of as-built Plans and Specifications and complete survey of all utility installations and easements, and (8) provide benchmark survey control for Building layout and verify to each Party that the Building survey itself is in accordance with these control points.



1.9 The Department Stores jointly shall have the right (but not the obligation) to employ a reputable engineering firm or company to act as an "Independent Engineer" in supervising and inspecting the quality of the On-Site Work. The said Independent Engineer shall have full and complete access to the Shopping Center Tract and to the contracts (including jointly approved Plans and Specifications) for the On-Site Work.

1.10 Each Party shall receive a copy of each inspection report by the Independent Engineer and Developer shall cause any deficiency to be cured promptly by the On-Site Work contractor, in a manner satisfactory to each Department Store. Any dispute involving said deficiency may be submitted to arbitration in accordance with "General Article 33 Arbitration" if each Party agrees in writing to submit such dispute to arbitration at or after the time such dispute arises. The fees, charges and expenses of the Independent Engineer shall be borne and paid by each of the Department Stores in the ratio which the acreage of their respective Tracts bears to the aggregate acreage of all of the Department Store Tracts.

### Construction

#### Article 2 Developer

##### Paragraph

2.1 Developer shall, with all reasonable promptness and diligence, at Developer's sole cost and expense, begin by not later than \_\_\_\_\_, 197\_\_\_\_, and complete (or cause to be completed) by not later than November 1, 1980, the construction on the Developer Tract of substantially the following Improvements (subject to acts beyond its control, as set forth in "General Article 28 Force Majeure"):

- (1) Fully sprinklered Buildings on one (1) level to comprise retail stores and commercial spaces totaling not less than 250,000 square feet of Floor Area, located substantially as shown on the Plot Plan, Exhibit "A", (and referred to as "'O' Section" or "Tenant Lease Space" on the Plot Plan) including all building and mechanical equipment therefor required to be installed by Developer pursuant to the requirements of its tenants' leases, and designed for occupancy only by retail and service businesses selling goods, wares, merchandise and services of the type customarily sold and provided in an integrated, first-class, regional shopping center, including, but not limited to, retail

stores and service shops and non-retail uses and purposes, subject to the provisions of Paragraph 12.4 hereof, such as, but not limited to, banks, stock brokerage offices, savings and loan associations, finance company, professional offices and multi-screen movie theater;

- (2) A fully sprinklered, covered and enclosed air conditioned and heated Enclosed Mall on one (1) level, which shall conform to all of the construction provisions of this Operating Agreement, together with the heating, air conditioning, lighting and ventilating equipment required to operate the same as an Enclosed Mall;
- (3) Paved, striped and lighted automobile Parking Area on the Developer Tract, as shall be necessary to obtain and maintain the parking index of Gross Leasable Area to Parking Spaces as required by the provisions of "Operation Article 15 Common Area" on the Developer Tract, all of which shall be constructed in accordance with the requirements for such spaces as set forth in Paragraph 2.2A(2) hereof;
- (4) Driveways, including customer pick-up, delivery passages, common truck loading areas, ring road, if any, ingress and egress roads, walkways, sidewalks, curbs, landscaped and planted areas and utility and other service buildings necessary and/or required for the operation of an integrated, first-class, regional shopping center, in conjunction with the Department Store Buildings on the Department Store Tracts;
- (5) Landscaped and planted areas as shown on the Plot Plan, Exhibit "A", and approved Plans and Specifications;
- (6) Such other facilities and Improvements on the Developer Tract (including connection to storm sewers on Department Store Tracts) as shall be necessary and/or required for the proper operation of an integrated, first-class, regional shopping center, including, but without limitation, (i) water mains and taps adequately sized, with adequate water pressure for all normal water needs to afford compliance with the reasonable requirements of the Protection Mutual Insurance Company, (ii) storm sewers and sanitary sewers, (iii) underground conduits to house power lines, (iv) telephone lines, (v) gas lines (if available), and (vi) all Common Utility Facilities, all of which shall be sufficient to effect adequate service to all the Improvements to be constructed in the Shopping Center;



- (7) Fire corridors complying with local law and building code requirements along the Department Store Buildings which will provide direct access to the Parking Area for persons leaving such Buildings through fire exits opening onto such corridors. At Developer's election, such fire corridors may serve other premises in addition to the Department Store Buildings and may be extended to connect with the Enclosed Mall, provided the corridor width complies with applicable code requirements for any such additional usage resulting from the extension of any such corridors to connect with the Enclosed Mall. Developer hereby grants to each Department Store for its use and the use by its Permittees and the members of the general public who are present in its Building the non-exclusive right and easement 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 to the Department Stores and the obligations of Developer, under the provisions of this subparagraph (7) shall remain in effect during the Term of this Operating Agreement and thereafter so long as each such Department Store Buildings (or any replacement thereof) stand;

all in accordance with the Plans and Specifications (including Design Criteria) therefor, prepared by Developer's architect, and approved by each Department Store prior to the commencement of such construction, as to the elevations, locations, exterior construction and appearance of all Buildings, structural construction of the Enclosed Mall and its attachment to such Department Store Buildings, structural construction of any Developer Buildings connecting to such Department Store Buildings and the layout, lighting, paving and landscaping of the Common Area, including Common Utility Facilities, which approvals shall not be unreasonably withheld, delayed or denied by any Party in any case.

2.2A In addition to the aforesaid Improvements to be constructed by Developer on the Developer Tract, Developer also shall (as an independent contractor), with all reasonable promptness and diligence, begin (or cause to be begun) by not later than \_\_\_\_\_, 197\_\_, and complete (or cause to be completed) by not later than November 1, 1980 (except for Site Preparation Work on each Department Store Tract, which shall be completed no later than eighteen (18) months prior to the Opening Date, as hereinafter defined), the construction on each Department Store Tract of the following On-Site Work (subject to acts beyond its control, as set forth in "General Article 28 Force Majeure"):



- (1) Site Preparation Work on each Department Store Tract, for the construction of each of the Department Store Buildings, including grading and preparation of building pad on each Department Store Tract as hereinafter provided. Grading of each Department Store Tract shall include: clearing, grubbing, removal of trees, shrubs, and stumps, removal of top soil, cutting, filling, grading, compaction of fill, excavation and compaction of building pads, soil borings, compaction tests by a testing laboratory, soil stabilization and treatment, and foundation and parking area recommendations, necessary for the construction of Buildings and other Improvements on each Tract, exclusive of excavation for Building floor levels below first floor level, except as required to remove unacceptable material. Developer shall prepare the building pad on each Department Store Tract in accordance with Plans and Specifications to be approved by each Department Store as to its own Tract, so as to properly support slab on fill for each Department Store Building. All fill will be carefully controlled in accordance with approved soils laboratory recommendations to properly stabilize and compact the soil fill area. Where the soil report recommends footing to bear on fill material, fill must be capable of supporting a minimum of 2.5 kips per square foot. The pads shall be completed to elevation which is eight inches (8") below finished floor grade. Unacceptable material shall be removed if necessary and replaced with controlled fill in accordance with laboratory recommendations. Developer shall provide and amplify soil reports as may be reasonably requested by each Department Store as to its Tract. Upon completion of building pad on each Department Store Tract, fill shall be certified by a testing laboratory to be in accordance with approved Plans and Specifications, no later than sixty (60) days prior to the date upon which each Department Store is required to commence construction of Improvements on its Tract as hereinafter provided in "Construction Article 3 Department Stores". Developer shall not be responsible for construction of any retaining walls on any Department Store Tract unless any such retaining wall is part of a berm which the Developer is required to provide in accordance with the Plot Plan;
- (2) Paved, striped and lighted automobile Parking Area on each Department Store Tract, to obtain and maintain the parking index of Gross Leasable Area to Parking Spaces, as shown on Plot Plan, Exhibit "A", and required by the provisions of "Operation Article 15 Common Area", all of which shall be:
  - (a) at ground level and suitably paved with heavy duty pavement for all truck dock areas, access roads and driveways, and medium duty pavement elsewhere; and with pavement thickness and design to be

based upon soils investigation design recommendations, CBR values, and approved by the Department Stores, which approvals shall not be unreasonably withheld;

- (b) laid out and marked in accordance with the Department Store Parking Typical Spacing Layout, as shown on Plot Plan, Exhibit "A" attached hereto;
  - (c) provided with lighting which shall have an average maintained intensity of one (1) foot candle minimum maintained throughout, at grade;
  - (d) completed in sufficient time to accommodate the opening for business by each Department Store on its Tract;
- (3) Landscaped and planted areas as shown on the Plot Plan, Exhibit "A", and approved Plans and Specifications; (exclusive of landscaped and planted areas, if any, between the exterior perimeter walls of each Department Store Building and the Building Perimeter Sidewalks adjoining each Department Store Building, which shall be the responsibility of each Department Store as to its own such Building Perimeter Sidewalk area);
- (4) Driveways, truckways, delivery passages, truck loading facilities, access roads, ring road, walkways, sidewalks, curbs and such other facilities and improvements as shown on the Plot Plan, Exhibit "A", and approved Plans and Specifications, or as are reasonably necessary for the proper operation of each Department Store, as a part of the Shopping Center, upon each Department Store Tract (excluding Building Perimeter Sidewalks);
- (5) Common Utility Facilities, including, without limitation, extension and installation of utility lines to within five feet (5') of the main building line on each Department Store Tract, with taps for each utility at no more than two (2) points on each Department Store Tract, except as otherwise shown and provided on approved Plans and Specifications; provided, however, that Developer shall furnish and maintain, or cause to be furnished and maintained, temporary water and electrical service lines within one hundred fifty feet (150') of the main building pad on each Department Store Tract during construction, and each Department Store shall pay for its own water and electricity used and consumed by it during construction; and



- (6) Construction staging area on each Party's Tract and a haul road leading to such staging area; provided, however, that each Department Store shall maintain the staging area on its own Tract during construction, and Developer shall maintain said haul road with sufficiently hard surface to accommodate access to each Party's Tract during construction;

all in accordance with the Plans and Specifications (including Design Criteria) therefor, prepared by the Project Engineer, and approved by each Department Store prior to the commencement of such construction, which approvals shall not be unreasonably withheld, delayed or denied by any Party in any case. Developer shall make all payments of money due to contractors from time to time for all such On-Site Work upon each Department Store Tract, and each Department Store shall reimburse Developer for its share of the cost of all such On-Site Work, as provided in that certain Supplemental Agreement by and between Developer and each such Department Store.

2.2B In addition to the aforesaid Improvements to be constructed by Developer on the Developer Tract and the aforesaid On-Site Work to be done and constructed by Developer on each Department Store Tract, Developer also shall (as an independent contractor), with all reasonable promptness and diligence, begin (or cause to be begun) by not later than           , 197  , and complete (or cause to be completed) by not later than November 1, 1980, the construction of the Off-Site Work to be done by Developer in accordance with Plans and Specifications (including Design Criteria) therefor, prepared by the Project Engineer, and approved by each Department Store prior to the commencement of such construction, which approvals shall not be unreasonably withheld, delayed or denied by any Party in any case; provided, however, that any such Off-Site Work which is to be done by any governmental agency or authority shall be done in accordance with Plans and Specifications prepared by such governmental agency or authority, and shall not be subject to any such approval by the Department Stores. Developer shall make all payments of money due to contractors (or governmental agencies) from time to time for the Off-Site Work to be done or caused to be done by Developer, and each Department Store shall reimburse Developer for its share of the cost of all such Off-Site Work, as provided in that certain Supplemental Agreement by and between Developer and each such Department Store.



2.3 The said Plans and Specifications (including Design Criteria) for construction of the Developer Improvements and the On-Site Work and Off-Site Work to be constructed by Developer as aforesaid, and any modifications thereto, shall be submitted by Developer to each Department Store no later than ninety (90) days prior to the construction commencement dates hereinabove set forth in Paragraphs 2.1 and 2.2 A and B of this Operating Agreement, in reproducible form accompanied by a transmittal enumerating all sheets, data, all drawings properly indexed and all drawings and specifications bound in sets. Said Plans and Specifications (including Design Criteria) shall be finally approved by Developer and each Department Store within sixty (60) days after receipt by each Party; provided, however, notwithstanding anything to the contrary contained herein, working drawings may be submitted for approval in stages or phases after commencement of construction, in order to expedite the work. When so approved, said Plans and Specifications (including Design Criteria) shall be by this reference, deemed to be a part of this Operating Agreement, and shall be available for inspection by any said Department Store at all reasonable times. Failure by any Party to either approve or disapprove said Plans and Specifications (including Design Criteria) in writing within such sixty (60) day period shall constitute approval thereof by such Party, provided that the transmittal thereof to each such Party expressly calls for such approval and advises the Party receiving such transmittal that said Plans and Specifications (including Design Criteria) shall be deemed to be approved unless written disapproval is given by such Party within such sixty (60) day period. Notwithstanding the foregoing, the failure of Developer to submit Plans and Specifications (including Design Criteria), or any part thereof, to the Department Stores for approval as aforesaid shall not constitute a default by Developer hereunder or relieve any Department Store from its obligation to reimburse Developer for its share of the cost of the work as provided above in Paragraph 2.2 hereof and in each Department Store's Supplemental Agreement, if the work is satisfactorily done and performed by Developer and accepted by each Department Store as to its Tract.

2.4 In consideration of the Parties acquiring their respective Tracts and constructing Improvements thereon of the size and location specified herein, and the approval of the Parties of the layout of the Parking Areas and circulation roads shown on the Plot Plan, the Parties mutually agree and covenant that no building or structure shall be erected except within the Permissible Building Areas and on the Reserve Tracts, as shown on the Plot Plan. The Developer Improvements (including Common Area Improvements to

be constructed by Developer on each Department Store Tract, as aforesaid), as well as the Department Store Improvements, shall be constructed and maintained, subject to the terms of this Operating Agreement, as shown on the Plot Plan. The foregoing covenants shall be of the essence of this Agreement, and any breach thereof shall be deemed material.

2.5 Subject to acts and events beyond the control of each Department Store (as set forth in "General Article 28 Force Majeure" and "General Article 29 Eminent Domain") and provided that each such Department Store shall have first approved the Plans and Specifications provided to be so approved, each Department Store hereby grants unto Developer, its agents, employees and contractors, the right to enter upon its respective Department Store Tract for purposes of performing all necessary work, operations and activities in connection with the construction of the Site Preparation Work and Common Area Improvements.

2.6 Developer shall, at its cost and expense, repair any damage to each such Department Store Building caused by:

- (1) Making the attachment as provided in Paragraph 26.1;
- (2) The construction and maintenance of the Developer Building and the Enclosed Mall; and
- (3) The installation of heating and air conditioning equipment in the Developer Building and the Enclosed Mall.

2.7 Developer shall indemnify and hold each Department Store (including the fee owner of any Department Store Tract in the event of a sale and lease-back transaction) harmless from and against any and all liens, claims, actions, damages, liability and expense incurred or claimed in connection with



the construction, attachment and maintenance of the Developer Building and/or Enclosed Mall and On-Site Work, including those claims, actions, damages, liability and expenses incurred or claimed in connection with the loss of life, personal injury or property damage occasioned wholly or in part by the negligent or willful acts or omissions of Developer, its agents, contractors or employees in the construction, attachment and maintenance of said Building and Enclosed Mall, but excluding any such claims, actions, damages, liability and expenses arising or resulting, in whole or in part from the negligent or willful acts or omissions of any Department Store, its agents, contractors or employees. Developer shall require its contractors to furnish payment and performance bonds, and Developer will endeavor to have each Department Store named as an additional obligee under such bonds, to the extent of any On-Site Work being done on each Department Store Tract.

2.8 Subject to events beyond its control, as set forth in "General Article 28 Force Majeure", Developer shall have the Enclosed Mall open for business with the public, and shall use its best efforts to have Occupants occupying at least sixty percent (60%) of the Gross Leasable Area in the Developer Buildings open for business with the public, on or before November 1, 1980; provided, however, that Developer shall, subject to said Article 28, use its best efforts (which shall not require the use of overtime or premium rates) to have the Enclosed Mall open for business with the public on or before July 1, 1980.

2.9 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 means of paying for the Site Preparation Work, the Off-Site Improvements and the Developer Improvements. 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 sufficient duration so as to allow adequate time for the completion of construction prior to the expiration thereof.



## Construction

### Article 3 Department Stores

#### Paragraph

3.1 Each Department Store shall, with all reasonable promptness and diligence, at each Department Store's sole cost and expense, commence by the later of                     , 197   , or sixty (60) days after completion by Developer of the Site Preparation Work on each Department Store's Tract, and complete (or cause to be completed) by not later than November 1, 1980, the construction of the following Improvements on each Department Store Tract (subject to acts beyond its control, as set forth in "General Article 28 Force Majeure") within its Permissible Building Area:

- (1) Penney shall construct, within the Permissible Building Area on its Tract, a fully sprinklered Department Store Building on two (2) levels having an aggregate Floor Area of not less than 145,000 square feet and the dimensions, height and configuration shown on the Plot Plan, Exhibit "A", with a public entrance on the Enclosed Mall, and including an attached Additional Store Building within its Permissible Building Area for use as an Automobile Tire, Battery and Accessory store (TBA);
- (2) Ward shall construct, within the Permissible Building Area on its Tract, a fully sprinklered Department Store Building on two (2) levels having an aggregate Floor Area of not less than 125,000 square feet and the dimensions, height and configuration shown on the Plot Plan, Exhibit "A", with a public entrance on the Enclosed Mall and with an attached Additional Store Building for use as a TBA;
- (3) Dillard shall construct, within the Permissible Building Area on its Tract, a fully sprinklered Department Store Building on two (2) levels having an aggregate Floor Area of not less than 125,000 square feet and the dimensions, height and configuration shown on the Plot Plan, Exhibit "A", with a public entrance on the Enclosed Mall;
- (4) Wilson shall construct, within the Permissible Building Area on its Tract, a fully sprinklered Building on two (2) levels having an aggregate Floor Area of not less than 60,000 square feet and the dimensions, height and configuration shown on the Plot Plan, Exhibit "A", with a public entrance on the Enclosed Mall;

- (5) Each Department Store, at its sole cost and expense, shall construct its own Building Perimeter Sidewalk and all landscaping and planted areas between the exterior perimeter walls of its Department Store Building and its said Building Perimeter Sidewalk and its own truck dock(s);

all in accordance with the Design Criteria therefor, prepared by each Department Store's architect. The Design Criteria for construction of each Department Store's Improvements, and any modifications thereto, shall be submitted by each Department Store to Developer for informational purposes at least sixty (60) days prior to the commencement of such construction. Such Design Criteria for the construction of each Department Store's Improvements shall show the locations and exterior design and appearance of Buildings, and the layout of the Common Area on each Department Store Tract, which shall conform with the Plot Plan, Exhibit "A", as it relates to the location of each Department Store's Improvements. It is the intent and agreement of the Parties that the Enclosed Mall and all of said Department Store Buildings and Developer's Building and all other Improvements on the Shopping Center Tract shall conform with the Plot Plan, and shall be architecturally harmonious and compatible.

3.2 Subject to events beyond its control as set forth in "General Article 28 Force Majeure", each Department Store shall open its Building for business with the public on or before November 1, 1980; provided, however, that each Department Store shall, subject to said Article 28, use its best efforts (which shall not require the use of overtime or premium rates) to open its Building for business with the public on or before July 1, 1980; and provided, further, that no Major Department Store shall be required to open for business with the public unless and until (i) construction of all of the Improvements which Developer is required to construct pursuant to Paragraphs 2.1 and 2.2 A and B of this Operating Agreement shall have been substantially completed, (ii) Occupants of at least sixty percent (60%) of the Gross Leasable Area in the Developer Buildings are open for business or are about to open, and (iii) at least one (1) other Major Department Store has opened for business in its Department Store Building or is about to open for business; except (a) that Ward shall not be required to open for business with the public unless and until the aforesaid conditions (i) and (ii) of this Paragraph have been satisfied and at least two (2) other Department Stores have opened for business or are about to open for business; (b) that Penney shall not be required to open for business with the public unless and until the aforesaid conditions (i) and (ii) of this Paragraph have been satisfied and at least one (1) of Dillard and Ward is open for business or is about to open for business; (c) that Dillard shall not be required to open for business with the public unless and until the aforesaid conditions (i) and (ii) of this Paragraph have been satisfied and at least one (1) of Penney and Ward has opened for business or is about to open for business; and (d) that Wilson shall not be required to open for business with the public unless and until the aforesaid conditions (i) and (ii) of this Paragraph have been satisfied and at least two (2) of the Major Department Stores have opened for business or are about to open for business; Provided further, however, that nothing contained in clauses (a), (b), (c) and (d) of this sentence is intended, or shall be construed, to release or relieve any Department Store from its covenants and obligations to commence and complete construction of its Improvements and to be prepared to open for business with the public as re-



quired and within the time provided in this Article 3, it being the intent of the Parties by the provisions of clauses (a), (b), (c) and (d) of this sentence to provide for a simultaneous opening by at least two (2) Major Department Stores insofar as possible. 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 Department Store Building by reason of the failure of Developer to meet any of the submission or completion dates specified in "Construction Article 2 Developer" of this Operating Agreement, which shall be the Department Stores' sole remedy at law and in equity in the event of any such delays caused by Developer. 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 two (2) of the Major Department Stores and Occupants of at least sixty percent (60%) of the Gross Leasable Area in the Developer Buildings along the Enclosed Mall first shall be open for business with the public is herein referred to as the "Opening Date"; provided, however, that if the Opening Date shall not have occurred on or before November 1, 1980, then for the purposes of this Operating Agreement, November 1, 1980, shall be deemed to be the Opening Date. Notwithstanding anything to the contrary contained herein, in no event shall any Department Store be required to open for business with the public during the period after November 1 of any year to January 2 of the succeeding year (except that Wilson shall not be required to open for business with the public during the period after November 15 of any year to March 1 of the succeeding year), during the period from May 1 to August 1 of any year, or during the thirty (30) day period prior to Easter Sunday.

#### Construction

#### Article 4 Future

##### Paragraph

4.1 Each Party shall have the right, at its own cost and expense, without any further approval or consent being required from any other Party, to alter or expand any Building or to construct an additional Building on such Party's Tract (including, without limitation, the Future Department Store Tract) after the completion of the construction described in the preceding Articles of this Operating Agreement, upon and subject to the following conditions and limitations:

- (1) The Party expanding shall, at its own cost and expense, proceed simultaneously with the construction and completion of both the Building alteration, expansion or additional Building, as the case may be, and additional Parking Spaces sufficient to maintain the parking index for the Shopping Center required by the provisions of "Operation Article 15 Common Area"; provided, however, that there shall be no multi-level parking without the approval of all Parties; and



- (2) No Party shall alter or expand any Building or construct any additional Building upon its Tract outside its Permissible Building Area, as shown on the Plot Plan, Exhibit "A", without prior written approval of each other Party; and
- (3) Such alteration or expansion shall not (i) result in a condition inconsistent with the Improvements as shown or provided for on the Plot Plan or Plans and Specifications, (ii) impair the structural integrity and soundness of the Improvement in question, (iii) result in a substantially different exterior appearance than existed before, (iv) render performance of any covenant hereunder on the part of such Party impossible, (v) result in a violation of the parking index required hereunder, (vi) materially obstruct or impair the view or sight line of any existing Building on the Shopping Center Tract from public perimeter roads and streets, or (vii) materially impair the vehicular or pedestrian traffic flow within the Shopping Center; and
- (4) Notwithstanding anything to the contrary contained herein, Developer shall have the right to develop, improve, use, operate, lease, sell, convey, transfer and otherwise deal with the Reserve Tracts and construct, erect, alter, expand, remove and reconstruct Buildings and Improvements thereon at any time and from time to time, but with the following limitations:
- (i) No buildings or other improvements will be constructed on any Reserve Tract within thirty feet (30') of the boundaries of such Reserve Tract;
- (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 on any Reserve Tract;
- (iii) The Parking Area on each of the respective parcels of land comprising the Reserve Tracts 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 each of the said respective parcels unless parking ratios for such usages published by the Urban Land Institute require higher ratios;
- (iv) No building erected on any Reserve Tract shall exceed one and one-half (1 1/2) stories in height;
- (v) All buildings erected on the Reserve Tracts shall be architecturally harmonious and compatible with each other and with the Buildings on the Shopping Center Tract, except for buildings erected by or for nationally recognized tenants or occupants which have a standard or customary building design, format or appearance;

(vi) The Reserve Tracts may be developed, improved and used for any retail business or office use or purpose, with the exception that no Reserve Tract shall be used for a purpose which may cause objectionable odors and/or untidiness such as (but not limited to) stand-up or drive-in curb service food facilities or other litter-creating operations; provided, however, that a sit-down type restaurant is not precluded hereby;

vii) Until such time as the Reserve Tracts are developed and improved by Developer, Developer shall keep the same planted with grass, mowed and in a clean and sightly condition;

(viii) The Reserve Tracts shall be maintained in a clean and orderly condition, consistent with the standards of maintenance for the Shopping Center. In the event of any damage or destruction of any buildings on the Reserve Tracts by fire or other casualty, the same shall promptly be repaired and restored or, in the alternative, if the owner or occupant of such Reserve Tracts elects not to repair or restore such building, it shall clear the Reserve Tract of all debris and hazardous conditions and shall leave such Reserve Tract in a clean, safe and sightly condition.

(ix) Each owner of a Reserve Tract shall maintain, or cause to be maintained, liability insurance on its Reserve Tract in accordance with the requirements of Paragraph 19.5 of this Operating Agreement.

The foregoing shall constitute covenants running with the Reserve Tracts; provided, however, that the foregoing restrictions relating to the Reserve Tracts and all obligations of Developer with respect to such restrictions shall not be enforceable as against any successor to Developer's interest in the Developer Tract from and after the date on which the holder of any first mortgage affecting the Developer Tract forecloses its mortgage, obtains a deed in lieu thereof or otherwise obtains possession of the Developer Tract without also acquiring the Reserve Tracts, except that the provisions of this paragraph shall be inoperative during any period while the holder of the first mortgage encumbering the Developer Tract also is the holder of a first mortgage encumbering the Reserve Tracts.

Notwithstanding anything to the contrary contained herein, no default by Developer under any of the foregoing covenants relative to the Reserve Tracts as set forth above in this subparagraph 4.1(4) shall entitle any of the Department Stores to cancel or terminate this Operating Agreement or any of their covenants and obligations hereunder or 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 Reserve Tracts shall be by way of damages and injunctive relief.



4.2 Except as and to the extent otherwise expressly provided for and permitted under the terms of this Article 4, any Building alteration or expansion or additional Building shall require the written approval of each Party prior to the beginning of construction. Notwithstanding anything to the contrary expressed or implied herein, no approval ever shall be required from the Department Stores with regard to the construction of Buildings or Improvements by Developer on the Reserve Tracts, so long as the same complies with the requirements hereinabove set forth in the immediately preceding subparagraph (4) of Paragraph 4.1 of this Operating Agreement.

4.3 No Party shall voluntarily dedicate, give, or cause to be taken, any part of the Parking Spaces, roadways, drives, walks or any other portion of the Common Area on its respective Tract for any public or exclusive private use, except for the granting of rights of way for the creation, widening or improvement of public streets around the perimeter of the Shopping Center, and/or utility easements, which may be required in connection with the construction and development of the Shopping Center.

4.4 Each Party hereto shall permit the future construction at a later date, as and when Developer shall see fit, within the area designated in the Plot Plan, Exhibit "A", as "FUTURE DEPT. STORE TRACT", of a Future Major Department Store Building and related improvements, subject to this Operating Agreement and the following:

- (1) The Future Major Department Store shall comply with the standards of construction provided in "Construction Article 3 Department Stores".
- (2) All such construction shall be in accordance with the details as shown on the Plot Plan, Exhibit "A" (including location and construction details).
- (3) A conveyance or lease of a portion of the Future Department Store Tract to such Future Major Department Store, as shown on the Plot Plan, Exhibit "A", and Survey, Exhibit "K", shall be made, and the Future Major Department Store shall have become a Party to this Operating Agreement or shall have entered into a separate operating agreement or lease of its Tract in the Shopping Center containing the same construction and operating terms, provisions and covenants as to such Future Major Department Store as are, in substance, contained herein as to each Major Department Store, and which operating agreement or lease shall be subject to the terms of this Operating Agreement, including, without limitation, the covenant of such Future Major Department Store to operate for at least ten (10) years.
- (4) Developer and any such Future Major Department Store always shall provide and maintain Parking Spaces sufficient to satisfy and maintain the parking index for the Shopping Center required by the provisions of "Operation Article 15 Common



Area"; provided, however, that there shall be no multi-level parking without the approval of all Parties.

4.5 Each Party shall conduct any expansion or construction of any additional Building, as provided in this Article, in such manner that existing Buildings and Improvements, as well as existing Common Utility Facilities, shall be maintained and in operation without any interruption or substantial inconvenience of any kind or character whatsoever.

4.6 All of the foregoing terms, provisions, conditions, restrictions and requirements applicable to Building expansions and additions also shall apply to and control any alteration or remodeling of original Buildings.

4.7 Until such time as the Future Department Store Tract and the area of Building F (Henry's Future) are developed and improved, Developer shall keep the same planted with grass, mowed and in a clean and sightly condition.

#### Construction

#### Article 5 Insurance

##### Paragraph

5.1 Before commencing work hereunder, Developer shall, or shall cause its contractor(s) to, effect, pay for, and keep in full force and effect during the entire duration of the work to be done by such contractor(s), insurance issued by companies qualified to do business in the state where the Shopping Center is located, as follows:

- (a) Workmen's Compensation and Employer's Liability Insurance affording (1) protection under the Workmen's Compensation Law of the state where the Shopping Center is located and (2) Employer's Liability protection subject to a limit of not less than \$100,000.00.
- (b) Comprehensive General Liability insurance in primary amounts not less than:

Bodily Injury:	\$2,000,000 per occurrence \$2,000,000 per aggregate
Property Damage:	\$2,000,000 per occurrence \$2,000,000 per aggregate.

This insurance shall:

- (i) include Contractual Liability coverage for the liability assumed by the contractor(s) under the indemnity agreements set forth in the construction contract(s);

(ii) include Completed Operations coverage;

(iii) not be subject to any of the special property damage liability exclusions commonly referred to as XCU exclusions;

(iv) be extended by the addition of the so-called "Broad Form Property Damage Endorsement";

and the Certificates of Insurance furnished by contractors shall show by specific reference that each of the foregoing items have been provided for.

(c) Comprehensive Automobile Liability Insurance with Employer's Non-Ownership Liability endorsement, in following primary amounts:

Bodily Injury:	\$2,000,000 per occurrence
Property Damage:	\$500,000 per occurrence.

Provided, however, that the primary amounts of coverage provided under subparagraphs (b) and (c) of this Paragraph 5.1 may be reduced (but not to less than \$250,000/\$500,000 for bodily injury and \$250,000 for property damage) if the contractor(s) furnish Catastrophe (Umbrella) Liability Coverage with limits of liability of not less than \$5,000,000 applying in excess of the primary coverages provided for in subparagraphs (b) and (c) of this Paragraph 5.1 (as reduced herein); and provided further, however, that the aforesaid Umbrella coverage provides for coverage at least equal to that provided for in the primary coverage.

5.2 Before commencing work hereunder, each Department Store shall, or shall cause its contractor(s) to, effect, pay for, and keep in full force and effect during the entire duration of the work to be done by such contractor(s), insurance issued by companies qualified to do business in the state where the Shopping Center is located, as follows:

(a) Workmen's Compensation and Employer's Liability Insurance affording (1) protection under the Workmen's Compensation Law of the state where the Shopping Center is located and (2) Employer's Liability protection subject to a limit of not less than \$100,000.00.

(b) Comprehensive General Liability insurance in primary amounts not less than:

Bodily Injury:	\$2,000,000 per occurrence
	\$2,000,000 per aggregate
Property Damage:	\$2,000,000 per occurrence
	\$2,000,000 per aggregate.



This insurance shall:

(i) include Contractual Liability coverage for the liability assumed by the contractor(s) under the indemnity agreements set forth in the construction contract(s);

(ii) include Completed Operations coverage;

(iii) not be subject to any of the special property damage liability exclusions commonly referred to as XCU exclusions;

(iv) be extended by the addition of the so-called "Broad Form Property Damage Endorsement";

and the Certificates of Insurance furnished by contractors shall show by specific reference that each of the foregoing items have been provided for.

(c) Comprehensive Automobile Liability Insurance with Employer's Non-Ownership Liability endorsement, in following primary amounts:

Bodily Injury: \$2,000,000 per occurrence

Property Damage: \$500,000 per occurrence.

Provided, however, that the primary amounts of coverage provided under subparagraphs (b) and (c) of this Paragraph 5.2 may be reduced (but not to less than \$250,000/\$500,000 for bodily injury and \$250,000 for property damage) if the contractor(s) furnish Catastrophe (Umbrella) Liability Coverage with limits of liability of not less than \$5,000,000 applying in excess of the primary coverages provided for in subparagraphs (b) and (c) of this Paragraph 5.2 (as reduced herein); and provided further, however, that the aforesaid Umbrella coverage provides for coverage at least equal to that provided for in the primary coverage.

5.3 Each Party shall maintain, or cause to be maintained, (i) insurance covering fire, lightning, extended coverage perils, vandalism, malicious mischief and sprinkler leakage, and (ii) Workmen's Compensation insurance during all the period of time any construction of Improvements upon its Tract is in progress and uncompleted and for construction obligations for which it is liable pursuant to the terms of this Operating Agreement. Such insurance shall contain provisions and be in amounts herein provided. Each Department Store shall have the right to self-insure in accordance with the terms of Paragraph 19.8 of this Operating Agreement.

5.4 Each Party shall, during any period of expansion, remodeling, extensive repairs or maintenance to any of the Improvements upon its Tract, maintain such insurance as is herein required to be carried and maintained during the initial construction period, except that the amounts thereof shall be reduced or increased according to the extent of such expansion, remodeling, repairs or maintenance.

5.5 Each Party hereby waives any and every claim which arises, or may arise, in its favor against any other Party during the period of construction for any and all loss of, or damage to, any of its property located within or upon, or constituting a part of, the Shopping Center, which loss or damage is covered by valid and collectible fire and extended coverage insurance policies, to the extent that such loss or damage is recoverable under said insurance policies and to the extent that this waiver is permitted under said insurance policies and does not invalidate any such insurance coverage. Said mutual waivers shall be in addition to, and not in limitation or derogation of, any other waiver or release regarding any loss of, or damage to, the said property of any Party. To the extent that any Party is unable to furnish such waiver of subrogation to the other Parties hereunder, this waiver of subrogation by the other Parties shall be ineffective and inapplicable as to the Party who is unable to furnish such waiver of subrogation. This waiver shall apply equally to any Party who elects to be self-insured, in whole or in part, as herein provided, as if such Party were independently insured.

#### Construction

#### Article 6 Liens

##### Paragraph

6.1 When, under the provisions of this Operating Agreement, construction is permitted to be performed or caused by a Party, and such construction is performed and done, it is understood and agreed that the Party performing or causing such construction shall not permit any mechanic's or materialmen's liens, or other similar liens, to stand against or attach to any part of the Shopping Center Tract.

6.2 The Party performing such construction may bond and contest the validity and amount of any such lien, but on final determination of the validity and the amount of the lien, said Party shall immediately pay any judgment rendered, with all proper costs and charges, and shall have the lien released at said Party's expense. Upon the request of any other Party, the Party performing such construction shall furnish, or cause to be furnished, a bond for the removal of any such lien, to the extent that any such lien affects the property of such other Party, provided such procedure for bonding of liens is available under applicable law.

6.3 The Party performing such construction shall indemnify, defend and hold harmless each other Party and each other Party's Tract from all loss, cost, damage, liability and expense (including attorneys' fees) resulting from the assertion of any such liens.

#### Construction

#### Article 7 Remedies of Department Stores Prior to Opening Date

##### Paragraph

7.1 In the event Developer (i) shall fail to commence (pour Building footings and foundations) or carry forward to



completion, the construction provided to be done by Developer under the provisions of "Construction Article 2 Developer" on or before the commencement date or completion date, respectively, as therein stipulated, subject to acts beyond the control of Developer as set forth in "General Article 28 Force Majeure", or (ii) defaults in its payment for said construction at any time, or (iii) fails to furnish the mortgage commitments as provided in Paragraph 2.9 of this Operating Agreement, or (iv) fails to fulfill the tenancy requirements of Paragraph 2.8 of this Operating Agreement, or (v) fails to open the Developer Building and Enclosed Mall for business on the date specified in Paragraph 2.8 of this Operating Agreement, as said date may be extended by acts beyond Developer's control as set forth in "General Article 28 Force Majeure", or as extended by the terms of Paragraph 2.8 of this Operating Agreement, or (vi) fails to obtain any and all permits which may be necessary in order to enable the construction and operation of the Shopping Center as contemplated in this Operating Agreement (provided, however, that each Department Store shall be required to obtain the building permits required for its Department Store Building), and if any such failure or default shall not have been remedied on or before the later of the expiration of twelve (12) months after the occurrence of such default or six (6) months 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 grace 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's Tract and Future Department Store Tract (if not theretofore conveyed to a Future Major Department Store), plus the cost of the On-Site Work fairly allocable to the Improvements on the Developer's Tract and Future Department Store Tract to the extent then completed, and the Improvements on the Developer's Tract and Future Department Store Tract to the extent then completed, plus all other sums actually expended by Developer in connection with the acquisition, development and improvement of the Developer's Tract and Future Department Store Tract, (ii) copies of all contracts and agreements made by Developer in connection with the acquisition, development and improvement of the Developer's Tract and Future Department Store Tract, and the construction of the Improvements thereon 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's Tract and Future Department Store Tract, and (iv) a copy of Developer's mortgage commitments for the Shopping Center, and the construction mortgage itself if the same shall have been executed. Then, (a) at any time before sixty (60) days after such information and documents are furnished by Developer to the Department Stores, upon notice to the other Parties, any one or more of the Department Stores may elect to resell and

reconvey its or their Tract or Tracts, as the case may be, to Developer, together with its or their Improvements, 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 Tract, 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, ownership and/or development (including without limitation, real estate taxes paid thereon and the amounts paid or payable in connection with the Off-Site Work or On-Site Work, as the case may be) of its or their Tract or Tracts, as the case may be, and construction of its or their Improvements, as the case may be (including, without limitation, Buildings and Common Area Improvements), together with interest at a rate of eight percent (8%) per annum or the maximum legal rate, whichever is lower, 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 Major Department Store elects to resell its Tract, any Major Department Store giving notice to Developer and to the other Department Stores within thirty (30) days after the expiration of the sixty (60) day period provided in clause (a) above, together with such other of the Major Department Stores as may elect to join in such purchase, may elect to purchase the Developer's Tract and Future Department Store Tract (if not theretofore conveyed to a Future Major Department Store, it being understood and agreed that this option to purchase the Future Department Store Tract shall automatically terminate and be of no further force or effect if and when the Future Department Store Tract is conveyed to a Future Major Department Store) and Wilson Tract if Wilson has exercised its right to require Developer to purchase its Tract hereunder, together with the Improvements to the extent then completed, for the actual cost to Developer of the Developer's Tract and Future Department Store Tract and Wilson Tract, plus all of Developer's unreimbursed costs theretofore incurred in connection with the On-Site Work for the entire Shopping Center Tract and the construction of Improvements on the Developer's Tract and Future Department Store Tract, or (c) if one or more but less than all of the Major Department Stores elect to resell its or their Tract or Tracts, any one or more of the other Major 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's Tract and Future Department Store Tract (if not theretofore conveyed to a Future Major Department Store), together with the Improvements thereon to the extent then completed, for the actual cost to Developer of the Developer's Tract and Future Department Store Tract, plus all of Developer's unreimbursed costs theretofore incurred in connection with the On-Site Work for the entire Shopping Center Tract and the construction of Improvements on the Developer's Tract and Future Department Store Tract, and (ii) from the selling Major Department Store or Stores and Wilson (if Wilson has exercised its right to require Developer to purchase its Tract hereunder), its or their Tract or Tracts, together with the Improvements thereon to the extent then completed, for the actual cost to each such Department Store of its Tract plus all of its costs and expenses theretofore incurred in connection with the acquisition and/or development (as set forth above) of its Tract and the construction of its Improvements together



with interest (as set forth above). If more than one Major Department Store shall give such notice, the purchasing Major Department Stores shall take title to the Developer's Tract, the Future Department Store Tract and the selling Department Store Tract(s), if any, as tenants in common, with each purchasing Major Department Store acquiring an equal fractional undivided interest in the Developer's Tract, the Future Department Store Tract and the selling Department Store Tract(s), if any. Each selling and purchasing Party shall be entitled to inspect and audit the other's books and records at reasonable times in order to verify the computation of the purchase price under this Paragraph, which books and records shall be retained by such Party, at their respective offices set forth at the head of this Operating Agreement, at least until the opening of the Shopping Center for business with the public.

7.2 The closing of title and the delivery of the deed under Paragraph 7.1 shall take place, at such place as the Department Store(s) shall designate in the general area in which the Total Development Tract is located, sixty (60) days after the giving of such notice of election and if any Department Store shall elect to resell its Tract, conveyance shall be by Limited (Special) Warranty Deed, free and clear of all liens, charges and encumbrances created or suffered by the selling Department Store, any easements for public utilities which the selling Department Store shall have granted in the reasonable exercise of its discretion in connection with the development of the Shopping Center, any dedication for public use which such selling 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, and this Operating Agreement insofar as it survives pursuant to Paragraph 7.4.

7.3 If any Major Department Store shall elect to purchase the Developer's Tract and Future Department Store Tract in accordance with clauses (b) or (c) of Paragraph 7.1, 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's Tract, (ii) all contracts and agreements made by Developer providing for or relating to the construction of the Improvements on the Developer's Tract 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 Operating Agreement, and (iv) Developer's mortgage commitments for the Shopping Center, 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 Shopping Center Tract. 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 Shopping Center Tract. 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, any easements for public utilities which Developer shall have granted 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 Developer shall have theretofore made for any governmental authority. Following the giving of any such notice by a Major Department Store to Developer as reflected in the first sentence of this Paragraph 7.3, 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 Major Department Stores purchase the Developer's Tract within six (6) months after the giving of such notice, this restriction shall lapse at the expiration of the said six (6) month period.

7.4 This Operating Agreement shall terminate on the closing of title as to such of the Department Stores as shall elect to sell under clause (a) of Paragraph 7.1, but not as to the Tract or Tracts sold and purchased or any easements affecting or benefiting any such Tracts. The rights of the Department Stores hereinabove provided for in this Article 7 and the enforcement thereof shall be the sole and exclusive remedies of the Department Stores against the Developer in the event of a default by Developer under this Operating Agreement prior to the Opening Date.

#### Construction

#### Article 8 Remedies of Developer Prior to Opening Date as to a Defaulting Department Store

#### Paragraph

8.1 In the event any Department Store shall fail to commence (pour Building footings and foundations) or carry forward to completion, the construction provided to be done by said Department Store under the provisions of "Construction Article 3 Department Stores" on or before the commencement date or completion date, respectively, as therein stipulated, or defaults, without reasonable cause, in its payment for said construction at any time, and such failure or default shall not have been remedied on or before the later of the expiration of twelve (12) months after the occurrence of such default or six (6) months after notice thereof by Developer to such Department Store, with a copy to the other



Department Stores, then Developer, within thirty (30) days after the conclusion of the immediately preceding referred to grace period, may give notice to the defaulting Department Store, with a copy to the other Department Stores, requesting the following information: (i) an itemization of the purchase price of the defaulting Department Store's Tract paid to Developer for acquiring its Tract, plus the cost of the Off-Site Work, Site Preparation Work, Common Utility Facilities, and the Improvements on said Department Store Tract to the extent then completed, to the extent then paid or payable 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 Tract. 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 Tract, together with the Improvements thereon to the extent then completed, for a price equivalent to the purchase price actually paid by it for its Tract plus all of its costs and expenses theretofore incurred in connection with the acquisition and development of its Tract and construction of its Improvements (including, without limitation, the amounts paid or payable in connection with its Department Store Building and the Off-Site Work, Site Preparation Work, Common Area Improvements and Common Utility Facilities) (collectively referred to as the "Buy Back Price"), together with interest at a rate of eight percent (8%) per annum or the maximum legal rate, whichever is lower, 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. 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 Paragraph, which books and records shall be retained by each such Party, at their respective offices set forth at the head of this Operating Agreement (or at another location within the continental United States) at least until a date six (6) years from the date hereof.

8.2 The closing of title and delivery of the deed under Paragraph 8.1 shall take place, at such place as the Developer shall designate in the general area in which the Total Development Tract is located, sixty (60) days after the giving of such notice of election.

8.3 If any Department Store's Tract shall be purchased in accordance with Paragraph 8.1, at the closing of title, the defaulting Department Store shall tender to Developer executed assignments of all contracts and agreements made by such defaulting Department Store providing for or relating to the construction of its Improvements, 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 Developer shall not accept an assignment or which Developer shall not have previously approved following request therefor, shall, upon notice to such effect given by Developer to the other party thereto, *ipso facto*, be terminated and of no further force and effect as between such party and Developer nor shall the same in any way thereafter be deemed to affect or be a charge on the Shopping Center Tract. Conveyance by the defaulting Department Store to Developer shall be by Limited (Special) Warranty Deed and the title shall be free and clear of all liens, charges and encumbrances other than this Operating Agreement, 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 Paragraph 8.1, such defaulting Department Store shall not enter into any further contracts or agreements without the prior consent of Developer; provided, however, that if Developer does not purchase the defaulting Department Store's Tract within six (6) months after the giving of such notice, this restriction shall lapse at the expiration of the said six (6) month period.

8.4 This Operating Agreement shall terminate as to such defaulting Department Store on the closing of title, but not as to the Tract sold and purchased or any easements affecting or benefiting any of the Tracts.

8.5 Notwithstanding anything to the contrary contained herein, Developer and each non-defaulting Department Store shall have all other rights and remedies available at law and in equity to enforce the terms, covenants and provisions of this Operating Agreement against any such defaulting Department Store, all of which rights and remedies are hereby expressly reserved, and the right and option of the Developer to purchase such defaulting Department Store's Tract as hereinabove provided in this Article 8 shall be in addition to, and not in lieu of, all other rights and remedies of Developer and the non-defaulting Department Stores against such defaulting Department Store; provided, however, that if Developer elects to exercise its right and option to purchase such defaulting Department Store's Tract under this Article 8, the exercise of such right and option shall constitute an election of remedies by Developer and shall preclude the enforcement of any other rights and remedies by Developer (but not by the non-defaulting Department Stores) against such defaulting Department Store, and the conveyance of such defaulting Department Store's Tract to Developer under this Article 8 shall satisfy all liability of such defaulting Department Store to Developer hereunder.



PART TWO

Operation

Article 9 Term

Paragraph

9.1 Unless terminated sooner pursuant to the express provisions hereof or by subsequent mutual agreement of the Parties, this Operating Agreement shall continue, the obligations hereunder shall remain binding and the reciprocal easements provided herein shall remain effective from the date hereof until the Opening Date and thereafter for a period of sixty (60) years, except to the extent that any easements survive pursuant to the terms of this Operating Agreement.

9.2 Each Department Store shall have four (4) successive options to renew the Term of this Operating 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 initial Term hereof, or the then renewal term, as the case may be; provided, however, that if only one Department Store shall give such notice, the Term of this Operating Agreement shall not be extended unless another Department Store shall also give such notice so that at least two (2) Department Stores shall have so elected to extend the Term of this Operating Agreement as to their Tracts and the Developer Tract. The Term of this Operating Agreement shall be deemed renewed as regards all of the Department Stores which shall have given such notice (provided as aforesaid that at least two (2) Department Stores shall have given such notice) and Developer, and their respective Tracts, and said renewal term shall be added to and become a part of the Term of this Operating Agreement (but shall not be considered a part of the initial Term) and any reference in this Operating Agreement to the "Term of this Operating Agreement" or the "Term" shall be deemed to include such renewal Term; provided, however, that any such renewal Term shall continue only for so long as at least two (2) Department Store Tracts are used for the purposes of this Operating Agreement and shall automatically terminate and end in the event that fewer than two (2) Department Store Tracts are used for the purposes of this Operating Agreement. The Term of this Operating Agreement shall not be deemed renewed as regards any Department Store which shall not have given said notice and this Operating Agreement shall expire and terminate as regards any such Department Store and its Tract upon the expiration of the initial Term hereof or the then renewal Term, as the case may be, except to the extent that any easements survive pursuant to the terms of this Operating Agreement.

Operation

Article 10 Shopping Center Name

Paragraph

10.1 For identification, public relations and advertising purposes, the name of the Shopping Center shall be "Towne West Square" and such name shall not be changed during the Term of this Operating Agreement without the written consent of each Party hereto, which consent shall not be unreasonably withheld, delayed or denied.

Operation

Article 11  
Temporary Cessation of Business

Paragraph

11.1 Any temporary cessation of business by any Party, occasioned by the making of repairs, alterations or renovations or by any Force Majeure, shall not constitute a breach on the part of the Party so ceasing business of its covenant to operate as provided in Article 22 or Article 23 of this Operating Agreement, as the case may be, so long as such Party is proceeding diligently with such work or the necessary efforts to resume operation.

Operation

Article 12 Tenant Leasing

Paragraph

12.1 Developer shall begin its leasing activities as promptly after the date of this Operating Agreement as Developer shall deem necessary for it to fulfill the requirements of this Article.

12.2 Developer shall diligently undertake in good faith to negotiate with prospective tenants, for the purpose of obtaining executed written lease agreements (or written letters of intention to enter into such lease agreements)



covering an aggregate of at least 200,000 square feet of Gross Leasable Area in the Buildings to be constructed on the Developer Tract. Developer agrees that it shall use its best efforts, to have in hand, all such executed written lease agreements (or written letters of intention) prior to the completion of the construction of said Buildings (as set forth in "Construction Article 2 Developer").

12.3 It is in the mutual and best interest of the Parties, and imperative to the maximum utilization of their adjoining properties, that the Shopping Center be developed and maintained as an integrated, first-class regional shopping center, to contain a combination of merchants and businesses which:

- (1) Represent a sound, balanced and generally compatible diversification of merchandise and services (i.e., "tenant mix");
- (2) Are qualified and willing to be a part of continuous merchandising and promotional program;
- (3) Will be of satisfactory financial condition and good repute;
- (4) Will efficiently utilize the available Parking Spaces, all other portions of Common Areas and the Enclosed Mall, or any portion thereof, to obtain the maximum amount of business profits; and
- (5) Will fixture, decorate and maintain their respective stores and business premises in a clean, safe, sightly, tasteful and decorous manner, having regard for the general standards of good appearance prevailing in the Shopping Center.

Developer will use its best efforts to effectuate a balanced distribution of said tenants on the Enclosed Mall in order to avoid an undue concentration of any particular type or class of tenant in any one area, and in order to effect, insofar as reasonably possible in the reasonable judgment and discretion of Developer, an equitable distribution of various types and classes of tenants in proximity to each Department Store Building.

12.4 Not more than ten percent (10%) of the Gross Leasable Area in the Developer Building shall be leased or used for non-retail uses and purposes, such as, but not limited to, banks, stock brokerage offices, savings and loan associations, finance company or professional offices. Provided, however, that the foregoing limitation on non-retail uses and purposes shall not apply to, include or restrict a movie theater; nor shall such limitation apply to, include or restrict any such non-retail uses and purposes in free-standing buildings erected by Developer on the Shopping Center Tract in accordance with the Plot Plan, Exhibit "A", or any building erected on any of the Reserve Tracts, subject to the provisions of this Operating Agreement.

Operation

Article 13 Merchants Association

Paragraph

13.1 Each Department Store shall, prior to the Opening Date, examine the organizational structure, articles of incorporation and by-laws of the "Merchants Association" which shall be formed by Developer for the purpose of promoting business in the Shopping Center, with membership therein offered to tenants and Occupants in the Shopping Center; and, if such organizational structure, articles of incorporation and by-laws are satisfactory and acceptable to each such Department Store, it shall approve the same, which approval shall not be unreasonably withheld, and it shall join said association commencing with the date it opens its store for business with the public and remain a member thereof, and pay such dues and contributions thereto, for at least five (5) years from and after said date, under and pursuant to those certain terms and conditions set out in that certain Supplemental Agreement between Developer and each said Department Store; and further provided that such membership and payment of dues shall be conditioned upon:

- (1) membership therein being available to each Department Store on a fair and equitable basis;
- (2) Developer and the Department Stores and Occupants of at least eighty percent (80%) of the Gross Leasable Area of the Developer Buildings used for the sale of selling goods, wares and merchandise and related services at retail being members of said association;
- (3) Developer paying not less than twenty-five percent (25%) of the annual budget of the Association, which amount Developer hereby covenants and agrees to pay and contribute annually to the Merchants Association on such dates as provided in the by-laws;
- (4) the by-laws containing no provision which would regulate, or empower said Merchants Association to regulate, the manner or hours of operation of any Department Store;
- (5) no Department Store being bound by an act or omission of said Merchants Association; the obligation of said Department Store to said Merchants Association being to pay dues and contributions in conformance with the provisions of this Article and said Supplemental Agreement; and
- (6) any Department Store which is not the corporate affiliate actually conducting business on its Tract causing such corporate affiliate to so become a member of the Merchants Association, subject to the terms hereof.



Operation

Article 14 Enclosed Mall

Paragraph

14.1 Developer shall, at its sole cost and expense (except for payment of contributions by Department Stores as hereinafter provided), at all times during the Term of this Operating Agreement (subject to the provisions of "Operation Article 20 Maintenance", and subject to acts beyond its control, as set forth in "General Article 28 Force Majeure") operate the Enclosed Mall in the manner of a first-class shopping center, including, without limitation:

- (1) Keep and maintain the Enclosed Mall in a clean, safe and sightly condition and in good order and repair, and cause the same to be well-lighted, attractive, in good appearance and open to the public at all times when the Building belonging to any Department Store or any part of said Building shall be open and doing business, and, in addition, the Developer shall cause the Enclosed Mall to be opened at least one (1) hour before any Department Store opens for business and to be kept open until at least one (1) hour after all Department Stores close on each business day;
- (2) Keep and maintain the Enclosed Mall heating and cooling system in good operating condition to:
  - (a) Cool the Enclosed Mall to the average temperature of not more than 78° Dry Bulb and to produce a relative humidity not exceeding 50% when the outside Dry Bulb temperature is 99° F. and the outside Wet Bulb temperature is 76° F. during each day of the Term hereof when local climatic conditions require, throughout all hours when the Building belonging to any Department Store, or any part of said Building is open and doing business, and for at least one (1) hour before any Department Store opens for business until at least one (1) hour after all Department Stores close on each business day; and
  - (b) Heat the Enclosed Mall with sufficient heat to maintain therein, an average temperature of at least 70° F. when the outside Dry Bulb temperature is 3° F. during each day of the Term hereof when local climatic conditions require,

throughout all hours when any Building belonging to any Department Store is open and doing business, and for at least one (1) hour before any Department Store opens for business until at least one (1) hour after all Department Stores close on each business day;

- (3) Prohibit any kiosk in the Enclosed Mall at any location or locations other than as shown on the Plot Plan, Exhibit "A", and in no event shall any kiosk exceed nine feet (9') in total height (including signs) or one hundred twenty (120) square feet in area or exceed dimensions of ten feet (10') in width by twelve feet (12') in length, and in no event shall any kiosk be used as a food or beverage dispensing facility or for a purpose causing obnoxious odors or untidiness;
- (4) Utilize a system of engineering control (whether by varying pressure or otherwise) which will insure that the heating and/or cooling of the Enclosed Mall shall not draw heated and/or cooled air from any Department Store Building, and, similarly, each Department Store shall utilize a system of engineering control (whether by varying pressure or otherwise) which will insure that the heating or cooling of each Department Store Building shall not draw heated and/or cooled air from the Enclosed Mall.

Each Department Store, commencing with the date it opens its 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 Enclosed Mall, shall pay to Developer the annual amount set forth in its respective Supplemental Agreement as its contribution toward the expenses of maintaining, operating, heating, ventilating and cooling the Enclosed Mall. Such annual amount shall be paid in monthly installments on or before the tenth day of each calendar month, provided Developer properly performs and furnishes all of the foregoing maintenance and services.

14.2 Developer shall use its best efforts, consistent with applicable laws, to prevent:

- (1) The distribution of any hand bills, or other advertising material, on or about any part of the Enclosed Mall;
- (2) The installation in, on or about the Enclosed Mall premises, of any amplifiers or similar devices, or the use in or about any Building on the Enclosed Mall of any advertising medium, which may be heard or experienced outside such Building, such as, flashing lights, spot lights, loud speakers, phonographs or radio broadcasts;



- (3) The burning of any papers, trash or garbage of any kind in the Enclosed Mall;
- (4) The use of any portion, or portions, of the Enclosed Mall for the purposes of loading or unloading any truck or other delivery vehicle, except in those portions designated for such purpose on Exhibit "A"; and
- (5) The distribution, or use, of any printed, or handwritten, papers or materials (including magazines and newspapers) of any kind or character on or about any part of the Enclosed Mall, unless and except as approved by the Merchants Association.

#### Operation

#### Article 15 Common Area

##### Paragraph

15.1 At all times during the Term, each Department Store shall maintain upon its Department Store Tract a minimum parking index of 5.0 automobile Parking Spaces for each 1,000 square feet of Gross Leasable Area upon each Department Store Tract, all as more particularly shown on the Plot Plan, Exhibit "A", and the Typical Parking Layout set forth on said Plot Plan.

15.2 At all times during the Term, Developer shall maintain upon the Developer Tract and Future Department Store Tract a minimum parking index of 5.0 automobile Parking Spaces for each 1,000 square feet of Gross Leasable Area upon the Developer Tract and Future Department Store Tract, all as more particularly shown on the Plot Plan, Exhibit "A", and the Typical Parking Layout set forth on said Plot Plan.

15.3 At all times during the Term of this Operating Agreement, no Party shall permit any fence, plant, shrub, barricade, barrier, chain, structure, building or other obstruction of any kind whatsoever, placed, kept, permitted or maintained on the Common Area (including the Enclosed Mall), or any part thereof, or between the Tracts of the Parties (except as may be shown on the Plot Plan, Exhibit "A"), without prior written consent from each other Party; except to the extent such temporary obstruction shall be reasonably required:

- (1) In connection with the use of any easements granted to any Party by the provisions of this Operating Agreement; or

- (2) In connection with the expansion, repair, or replacement of any of the Improvements from time to time located in the Shopping Center; or
- (3) Once in each calendar year, for the purpose of blocking off access to the Common Area in order to avoid the possibility of dedicating the same for public use or creating prescriptive rights therein, such barriers to be temporarily erected, for such purpose, if possible, at a time or upon a day when the Shopping Center is not open for business.

The Parties agree that they will do nothing to prohibit, impede or discourage the free and uninterrupted flow of pedestrian and vehicular traffic throughout the Total Development Tract and between and among the component Tracts therein on the areas shown therefor in the Plot Plan.

15.4 Each Party shall use its best efforts, consistent with applicable laws, to prevent:

- (1) The distribution of any hand bills or other advertising material on or about any part of the Common Area on its Tract;
- (2) The installation in, on or about the Common Area on its Tract of any amplifiers or similar devices, or the use in or about any Building on the Common Area of any advertising medium which may be heard or experienced outside such Building, such as, flashing lights, spot lights, loud speakers, phonographs or radio broadcasts;
- (3) The burning of any papers, trash or garbage of any kind on the Common Area on its Tract;
- (4) The use of any portion, or portions, of the Common Area on its Tract for the purposes of loading or unloading any truck or other delivery vehicle, except in those portions designated for such purposes on Exhibit "A";
- (5) The distribution, or use, of any printed, or handwritten, papers or materials (including magazines and newspapers) of any kind or character on or about any part of the Common Area on its Tract, unless and except as approved by the Merchants Association; and



- (6) No selling activities or display of merchandise shall be conducted or permitted by any Party upon or within the Common Area, except (i) from kiosks erected in the Enclosed Mall subject to the terms of Paragraph 14.1(3), or (ii) in connection with philanthropic, public, quasi-public or promotional activities authorized by the Merchants Association.

Notwithstanding each Party's obligations hereunder, Developer shall use its best efforts to enforce the foregoing restrictions in the Common Areas.

#### Operation

#### Article 16 Signs

##### Paragraph

16.1 Developer shall prohibit the erection of any sign on the Developer Tract, and Future Department Store Tract or on any Building within such Tract, and each Department Store shall prohibit the erection of any sign on its Department Store Tract, which is not in conformity with the Sign Criteria which are set forth in Exhibit "L" annexed hereto and incorporated herein. No pylon signs shall be permitted on the Shopping Center Tract, except as shown on the Plot Plan and as provided in Exhibit "L" attached hereto. No pylon signs which violate the provisions of subparagraph 4.1(4)(ii) of this Operating Agreement shall be permitted on any Reserve Tract, and all pylon signs on the Reserve Tracts shall comply with the requirements contained in Exhibit "L" attached hereto, to the extent applicable.

Operation

Article 17 Utilities

Paragraph

17.1 Developer shall, at its sole expense, provide, or cause to be provided, all Common Utility Facilities, including water, gas (if available), electric, telephone, sanitary sewers and storm sewers, all as more particularly provided for in Paragraph 2.2A(5). Unless otherwise shown on approved Plans and Specifications, no utility serving said Department Stores shall extend under any structure or Building belonging to any other Parties but shall be extended either from dedicated streets or rights-of-way or shall be extended from a loop located outside the various Buildings' Permissible Building Area within the Shopping Center.

17.2 Except as otherwise expressly provided in this Operating Agreement with regard to utility services for the Parking Area on each Tract, each Party shall make arrangements for and pay, or cause to be paid, any and all charges for utility services supplied on its own Tract and no Party shall have any liability for utility services to any other Party's Tract.

Operation

Article 18 Taxes

Paragraph

18.1 Each Party shall pay, when due, all real estate taxes and assessments upon its Tract (including the Future Department Store Tract, upon which such taxes and assessments shall be paid by Developer until such time as title to the Future Department Store Tract is conveyed by Developer) which shall be assessed, levied, imposed or become a lien thereon during the Term of this Operating Agreement.

18.2 In the event Developer shall deem any real estate tax or assessment (including the rate thereof or the assessed valuation of the property in question or any other aspect thereof) to be paid by Developer to be excessive or illegal, Developer shall have the right, at its own cost and expense, to contest the same by appropriate proceedings, and nothing contained in this Article shall require Developer to pay any such real estate tax or assessment as long as the amount or validity thereof shall be contested in good faith if, in the opinion of counsel for Developer, the Developer Tract shall not thereby be in danger of being forfeited.



18.3 In the event any Department Store shall deem any real estate tax or assessment (including the rate thereof or the assessed valuation of the property in question or any other aspect thereof) to be paid by said Department Store to be excessive or illegal, said Department Store shall have the right, at its own cost and expense, to contest the same by appropriate proceeding and nothing contained in this Article shall require said Department Store to pay any such real estate tax or assessment as long as the amount or validity thereof shall be contested in good faith if, in the opinion of counsel for said Department Store, its Tract shall not thereby be in danger of being forfeited.

18.4 Any assessment for public improvements (exclusive, however, of assessments for the Off-Site Work) levied against the Total Development Tract or any component Tract thereof shall be paid by all of the Parties hereto in the ratio that the land area of each Party's Tract bears to the land area of the Total Development Tract; 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) benefiting less than all the Parties shall be borne solely by the Party or Parties so benefiting.

#### Operation

#### Article 19 Insurance

##### Paragraph

19.1 Developer shall, effective with the completion of construction of the Building, the Enclosed Mall and all the other Improvements on the Developer Tract (and the Future Department Store Tract if the same has not been conveyed by Developer), and thereafter during the Term of this Operating Agreement, continuously keep, or cause to be kept, all Buildings, the Enclosed Mall and all other Improvements upon the Developer Tract (and the Future Department Store Tract until such time as the same is conveyed by Developer) insured, at its sole expense, against loss or damage by fire and such other risks and casualties as are from time to time included in the "all risk" extended coverage of insurance policies issued in the locality of the Shopping Center, and shall furnish the other Parties with satisfactory evidence of such insurance coverage. Said insurance shall be in amounts at least sufficient to avoid the effects of co-insurance provisions of the policies, that is, not less than ninety percent (90%) of the actual replacement costs of said Buildings and Improvements, including the Enclosed Mall, but excluding foundations, excavation costs and the costs of underground flues, pipes and drains if such costs are properly excludable under current co-insurance requirements.

19.2 Each Department Store shall, effective with the completion of construction of all the Buildings and all the other Improvements on its Tract, and thereafter during the Term of this Operating Agreement, continuously keep all the Buildings and all the other Improvements upon said Tract insured, at its sole expense, against loss or damage by fire and such other risks and casualties as are, from time to time, included in the standard extended coverage provisions of insurance policies issued in the locality of the Shopping Center, and shall furnish the other Parties with satisfactory evidence of such insurance coverage. Said insurance shall be in amounts at least sufficient to avoid the effects of co-insurance provisions of the policies, that is, not less than ninety percent (90%) of the actual replacement costs of said Buildings and Improvements, but excluding foundations, excavation costs, and the costs of underground flues, pipes and drains if such costs are properly excludable under current co-insurance requirements.

19.3 Such policies may be made payable to the holder of any first mortgage or deed of trust (hereinafter called "mortgagee") which is a lien upon the Tract 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's Tract (and the Future Department Store Tract until title has been conveyed by Developer), such mortgagee agrees that it will, in the event of loss, apply the proceeds in accordance with this Operating Agreement, and (ii) with regard to any of the Department Store Tracts, the Department Store in question agrees to repair, restore and rebuild the Buildings and other Improvements on its Tract in accordance with this Operating Agreement, without regard to the fact that such insurance proceeds may have been paid to its mortgagee and may, therefore, be unavailable to such Department Store, and such Department Store, or a corporation which has guaranteed performance of such Department Store's obligations hereunder, has a net worth of more than \$40,000,000. Any loss covered by such insurance shall be adjusted with the insured Party, and if the loss is in excess of \$50,000 and neither the insured Party nor a corporation which has guaranteed performance of the insured Party's obligations hereunder shall have a net worth of more than \$40,000,000, 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 Party or a corporation which has guaranteed performance of the insured Party's obligations hereunder shall have a net worth of \$40,000,000 or more, the insurance proceeds shall be paid to the insured Party and applied by it toward the cost of restoration, all as more particularly provided in this Operating Agreement.



19.4 Each Party hereby mutually waives, for itself and its insurance carrier, any and every claim which arises, or may arise, in its favor against any other Party during the Term of this Operating Agreement for any and all loss of, or damage to, any of its property located within or upon, or constituting a part of, the Shopping Center, which loss or damage is covered by valid and collectible fire and extended coverage insurance policies, to the extent that such loss or damage is recoverable under said insurance policies and to the extent that this waiver does not invalidate any such insurance coverage. Said mutual waivers shall be in addition to, and not in limitation or derogation of, any other waiver or release regarding any loss of, or damage to, the said property of any Party. To the extent that any Party is unable to furnish such waiver of subrogation to the other Parties hereunder, this waiver of subrogation by the other Parties shall be ineffective and inapplicable as to the Party who is unable to furnish such waiver of subrogation. This waiver shall apply equally to any Party who elects to be self-insured, in whole or in part, as herein provided, as if such Party were independently insured.

19.5 At all times during the Term of this Operating Agreement, each Party shall, at its sole expense, continuously maintain Comprehensive General Liability Insurance, endorsed to cover personal injury and contractual liability, covering the Building, or Buildings, Enclosed Mall, Outdoor Selling Area, if any, and the landscaping, if any, between the exterior perimeter wall of Buildings and Building Perimeter Sidewalk, on its Tract or Tracts (including the Future Department Store Tract, upon which Developer shall maintain such insurance until title has been conveyed by Developer) within the Shopping Center Tract, and on any other portions of its Tract not covered by the insurance hereinafter provided for in Paragraph 19.6. Such insurance shall afford protection to each Party as named insured under its own policy, to the limit of not less than:

- (1) \$3,000,000 for death of, or bodily injury to, or personal injury to, more than one person, in or resulting from one occurrence; and
- (2) Property damage to the limit of not less than \$500,000 for each occurrence.

Provided, however, that the primary amounts of coverage provided under subparagraphs (1) and (2) of this Paragraph 19.5 may be reduced (but not to less than \$500,000 for bodily injury and \$500,000 for property damage) if the Party furnishing such reduced primary amounts of coverage shall furnish Catastrophe (Umbrella) Liability Coverage with limits of liability of not less than \$5,000,000 applying in excess of the primary coverages provided for in subparagraphs (1) and (2) of this Paragraph 19.5 (as reduced herein); and provided further, however, that the aforesaid Umbrella coverage provides for coverage at least equal to that provided for in the primary coverage.

Each Party shall, upon request of any other Party, furnish certificates of such insurance or other satisfactory written evidence of such insurance at any time during the Term hereof. Any policy required hereunder shall provide that such policy shall not be cancellable without at least ten (10) days' prior written notice to the Parties hereto.

Notwithstanding anything to the contrary contained herein, Developer shall maintain the aforesaid insurance on the Enclosed Mall even if a portion of such Mall (or any footings or foundations) is on the Tract of another Party.

19.6 At all times during the Term of this Operating Agreement, Developer and each Department Store shall continuously maintain, at its expense, Comprehensive General Liability Insurance, endorsed to cover personal injury (including false arrest) and contractual liability, covering the Common Area on its Tract (including the Future Department Store Tract, upon which Developer shall maintain such insurance until title is conveyed by Developer). Such insurance coverage shall be maintained with recognized and financially responsible insurance companies and shall afford protection to Developer and each Department Store, to the limits of not less than:

- (1) \$3,000,000 for death of, or bodily injury to, or personal injury to, more than one person, in or resulting from one occurrence; and
- (2) Property damage to the limit of not less than \$500,000 for each occurrence.

Provided, however, that the primary amounts of coverage provided under subparagraphs (1) and (2) of this Paragraph 19.6 may be reduced (but not to less than \$500,000 for bodily injury and \$500,000 for property damage) if the Party furnishing such reduced primary amounts of coverage shall furnish Catastrophe (Umbrella) Liability Coverage with limits of liability of not less than \$5,000,000 applying in excess of the primary coverages provided for in subparagraphs (1) and (2) of this Paragraph 19.6 (as reduced herein); and provided further, however, that the aforesaid Umbrella coverage provides for coverage at least equal to that provided for in the primary coverage.

Each Party shall deliver to each other Party a certificate evidencing such insurance coverage, on or prior to the beginning of the Term, and, thereafter, not less than fifteen (15) days prior to the expiration dates of the expiring policy, or policies, during the Term. Any policy required hereunder shall provide that such policy shall not be cancelled without at least ten (10) days' prior notice to each Party. Each such policy shall include contractual liability coverage for the liability assumed by each Party under the indemnity agreement of each Party hereinafter set forth in Article 32 of this Operating Agreement.



19.7 Each Department Store shall have the right, at its option, to comply with and satisfy its obligations under this Article and Article 5 by means of:

- (i) self-insurance to the extent of all or any part of insurance required under said Paragraphs, but only if such Department Store or an entity guaranteeing performance of this Operating Agreement for such Department Store, shall have a net worth in excess of \$40,000,000.00; and/or
- (ii) any so-called blanket policy or policies of insurance covering this and other locations of such Party, provided that such policy or policies by the terms thereof shall allocate to the building and liabilities to be insured hereunder an amount not less than the amount of insurance required to be carried pursuant to Paragraph 19.2 hereof and shall not diminish the obligations of the particular Party to carry insurance, so that the proceeds from such insurance shall be an amount not less than the amount of proceeds that would be available if the Party was insured under a unitary policy.

As used herein, the term "net worth" shall mean the stockholder's or shareholder's equity as determined in accordance with sound accounting practices. Provided, however, that if the net worth of any Party or its guarantor declines to \$40,000,000 or less, then the provisions of Paragraph 19.3 regarding application of insurance proceeds shall apply to such Party.

#### Operation

#### Article 20 Maintenance

#### Paragraph

20.1 During the Term hereof and any renewal or extension thereof, Developer shall keep, repair, manage, operate and maintain the Common Area on each Tract (exclusive of Building Perimeter Sidewalks and landscaping, if any, between the exterior perimeter wall of Buildings and

*Exterior?  
Landscaping!*

*See Def  
you!*

Building Perimeter Sidewalks on each Department Store Tract which are to be maintained by each Department Store on its own Tract), the Common Utility Facilities and the Enclosed Mall, in all cases in good and clean order, operation, condition, and repair, in conformity with the best shopping center standards, and in such manner as to establish, maintain, and present, at all times, the appearance of a clean, well managed, attractive, coordinated, and a unified operation of all of the Common Area and the Enclosed Mall on the Shopping Center Tract, commencing on completion of construction of the Common Areas and the Enclosed Mall, subject to the right to reimbursement from each Department Store as provided in the Supplemental Agreement between Developer and each Department Store. Developer, its agents and employees, shall have, and is hereby granted, access to the Tract of each Party for the purpose of performing such maintenance. Such maintenance shall include keeping the Shopping Center Tract reasonably clean and free of debris, ice, snow and trash and sanding of driveways and entrances during icy conditions, but maintenance shall not include capital replacements. Each Department Store shall be responsible for the maintenance and repair of the interior and exterior of its Building (including Building Perimeter Sidewalks and perimeter landscaping) on its own Tract at its own expense.

20.2 In the event Developer should be in default under this Article, which default continues for a period of sixty (60) days after any other Party gives written notice to Developer (or for 48 hours in the case of an emergency), and such other Party thereafter shall elect to perform such maintenance and services as are authorized, the said other Party, its agents and employees shall have, and is hereby granted, access to the Developer Tract for the purpose of performing the maintenance obligations required under this Article; provided, however, that no Department Store shall have the right pursuant to this Paragraph to perform such maintenance and services on the Tract of any other Department Store or to take over Developer's obligations under this Article with respect to another Department Store's Tract. The Party performing such maintenance and services on behalf of the Developer shall be entitled to receive reimbursement from the Developer for all costs and expenses incurred in performing such maintenance and services, payable upon demand with interest at the maximum legal rate, but not to exceed eight percent (8%) per annum.

20.3 In the operation and maintenance of the Shopping Center, Developer shall observe the following standards:



- (1) As required, remove all papers, debris, filth and refuse and wash or thoroughly sweep floors, walkways, stairways, Parking Areas and sidewalks (other than Building Perimeter Sidewalks);
- (2) Clean and repaint lighting fixtures and relamp as needed;
- (3) Except as otherwise provided in Paragraph 20.6 with regard to capital replacement, maintain the surface of Parking Areas, ring road and access roads and repaint striping, markers, directional signs, etc., as necessary, to maintain in first-class condition;
- (4) Maintain landscaping, fountains and seating areas, as necessary, to keep in a first-class condition (except landscaping between each Department Store's exterior perimeter walls of Buildings and Building Perimeter Sidewalks, which shall be the responsibility of each Department Store as to such landscaping on its own Tract);
- (5) Employ courteous and uniformed personnel, in adequate numbers, for effective security patrol and security functions during store hours and such other hours as are deemed necessary by the Parties, both as to the Enclosed Mall and the Common Area on each Tract;
- (6) Clean signs of the Shopping Center (as contrasted with those of Occupants) including relamping and repairs being made as required);
- (7) Maintain and keep in a sanitary condition public restrooms, if any, and other common use facilities on the Enclosed Mall;
- (8) Clean, repair and maintain all Common Utility Facilities to the extent that the same are not cleaned, repaired and maintained by public utilities;
- (9) Keep all Common Areas lighted during all darkness hours while the Shopping Center is open, until one-half (1/2) hour after all Department Stores have closed for the evening, with lighting which shall have an average intensity of one (1) foot candle minimum maintained throughout, at grade; and furnish night lighting averaging at least twenty-five percent (25%) of full lighting capacity after closing;
- (10) Employ a qualified resident manager; and
- (11) Promulgate and enforce reasonable rules, regulations and policies for the use and control of the Enclosed Mall and Common Areas.

20.4 Each Department Store shall pay and reimburse Developer for each said Department Store's share of Developer's cost and expense of operating and maintaining the Enclosed Mall and Common Areas, including, without limitation, Common Utility Facilities, hereunder, in the annual amount set forth in that certain Supplemental Agreement between Developer and each said Department Store.

20.5 Unless the Parties otherwise consent and agree, in writing, no charge of any type shall be made to, or collected from, any Occupant or any Permittee for parking, or the right to park vehicles in the Parking Spaces. Permittees shall not be prohibited or prevented from so parking so long as Parking Spaces are available, and so long as they do not violate the reasonable rules and regulations covering the use of the Parking Spaces promulgated from time to time by the Parties. The Parties shall, by mutual agreement, prescribe certain sections within the Common Area, or on other land outside the Common Area within a reasonable distance from the nearest boundary of the Shopping Center, for use as Parking Spaces for the employees, contractors, licensees and concessionaires to use only such sections as are so prescribed for parking. Each Party agrees to use reasonable efforts to enforce the provisions hereof.

20.6 Notwithstanding anything to the contrary contained in this Operating Agreement, in the event any capital replacement of any of the paving, curbs or lighting standards is required as to any portion of the Parking Area located anywhere upon and within the Shopping Center Tract (other than repairs and replacements necessitated by any casualty covered by insurance), such repairs and replacements shall be performed, furnished and paid for by each Party on its own Tract. If resurfacing of the entire Parking Area on the Shopping Center Tract is required, such work shall be performed and furnished by Developer, and each Department Store shall reimburse Developer for such Department Store's proportionate share of the cost of such resurfacing in the ratio which the acreage in each Department Store Tract bears to the total acreage in the Total Development Tract, provided that such work is done pursuant to a contract (and amounts) approved by the Department Stores, which approval shall not be unreasonably withheld, delayed or denied. All such capital replacements shall be of the same general type and quality as the installations and facilities being replaced.

20.7 Notwithstanding anything to the contrary contained herein, any Department Store may, upon the giving of written notice to Developer not less than ninety (90) days prior to the beginning of any calendar year (but not more than once in any five year period), elect to keep, maintain and operate the Common Area (exclusive of Common Utility Facilities) on its Tract in accordance with the provisions set forth in this Article 20, commencing with the calendar year following the giving of such notice, and in the event of such election and except as hereinafter otherwise provided, the Party so electing shall no longer be required to share in the cost of the Common Area Maintenance Charge as provided in Supplemental Agreements, commencing with such calendar year. Thereafter, any such Department Store may,



upon the giving of written notice to Developer not less than ninety (90) days prior to the beginning of any calendar year (but not more than once in any five year period), elect to return to and require the Developer to keep and maintain and operate the Common Area on its Tract in accordance with the provisions of this Article 20, commencing with the calendar year following the giving of such notice, and in the event of such election, the Party so electing shall again be required to share in the cost thereof as set forth in Paragraph 20.4. Provided, however, anything to the contrary herein notwithstanding, no Department Store shall have any right or option to take over the repair and maintenance and operation of the Enclosed Mall, or any part thereof, or to take over the furnishing of heating, ventilating and air conditioning for the Enclosed Mall or any part thereof. Notwithstanding anything to the contrary contained herein, in the event that any Department Store elects to take over the maintenance and operation of the Common Area (exclusive of Common Utility Facilities) on its Tract as herein provided, such Department Store nevertheless shall continue (i) to pay to Developer the annual amount set forth in its Supplemental Agreement as its contribution toward the expense of heating, ventilating and cooling the Enclosed Mall as provided in Paragraph 14.1 hereof, (ii) to reimburse Developer for such Department Store's proportionate share of the cost of electrical service furnished by Developer, through a single meter on Developer's Tract, for lighting of the Parking Area on each Department Store Tract in the ratio which the acreage in each Department Store Tract bears to the total acreage in the Total Development Tract, unless such Department Store has elected to have such electrical service separately metered to its Tract, and (iii) to reimburse Developer for each Department Store's proportionate share of the cost of keeping, managing, operating and maintaining the Common Utility Facilities and the cost of providing security personnel in and upon the Common Areas (unless such Department Store also furnishes its own security on the Common Area on its Tract) upon the Shopping Center Tract, in the ratio which the Gross Leasable Area on each Department Store Tract bears to the total Gross Leasable Area on the entire Total Development Tract, and Developer shall continue to furnish such maintenance and services referred to in clauses (i), (ii) and (iii) above. In the event any Department Store has assumed the responsibility for maintaining the Common Area on its Tract as hereinabove provided, it shall observe the applicable standards set forth in Paragraph 20.3 of this Operating Agreement, and if such Department Store should thereafter default in its obligation to keep, maintain and operate the Common Area on its Tract in accordance with the provisions set forth in this Article 20, and such default continues for a period of sixty (60) days after Developer gives written notice to the defaulting Department Store (or for 48 hours in the case of an emergency) and Developer thereafter shall elect to perform such maintenance and services as are authorized, Developer, its agents and employees, shall have, and are hereby granted, access to the Common Area on the Tract of the defaulting Department Store for the purpose of performing the maintenance obligations required under this Article, and Developer shall be entitled to receive reimbursement from the defaulting Department Store for all costs and expenses incurred in performing such Common Area Maintenance on the Tract of the defaulting Department Store, payable upon demand with interest at the maximum legal rate, but not to exceed eight percent (8%) per annum.

## Operation

### Article 21 Improvements Destruction

#### Paragraph

21.1 In the event of the destruction of, or damage to, the Buildings, the Enclosed Mall or other Improvements upon the Developer Tract (including Common Area thereon), or any part thereof, at any time during the period of fifteen (15) years from and after the Opening Date, by fire, windstorm or other casualty required to be insured against hereunder, Developer shall promptly and diligently rebuild, repair and restore such Buildings, Enclosed Mall and other Improvements so that there shall then be substantially the same number of square feet of Floor Area on the Developer Tract, in the same location as presently shown on Exhibit "A", and of the same general appearance, type and quality, in as good condition, and constituting an integrated, first-class, regional shopping center, including the Enclosed Mall and Common Area as existed on the Developer Tract prior to the damage or destruction. In the event of any such destruction or damage at any time after the expiration of such fifteen (15) year period following the Opening Date, Developer shall be obligated to so rebuild, repair and restore only in the event that (i) at least two (2) Major Department Stores are then either operating as such Department Stores on their respective Tracts, or such Major Department Stores are repairing and rebuilding their respective Buildings and Improvements to be duly reopened and operated as such Major Department Stores, and (ii) at least two (2) Major Department Stores enter into a written agreement with Developer to use and operate a Major Department Store on its Tract for at least ten (10) years following the completion of the repair and restoration.

21.2 Any Building, Enclosed Mall or other Improvements required to be rebuilt, repaired and restored by Developer, pursuant to this Operating Agreement, shall be rebuilt, repaired and restored and ready for occupancy with due diligence, not to exceed eighteen (18) months from the time when the loss or destruction occurred (except where such repairs and restoration amounts to less than One Hundred Thousand Dollars [\$100,000.00] in cost, in which event the same shall be completed and ready for occupancy within sixty [60] days after such occurrence), subject, however, to unavoidable delays stipulated under the provisions of "General Article 28 Force Majeure".

21.3 In the event of the destruction of, or damage to, the Buildings or other Improvements, or any part thereof, upon the Tract of any Department Store (including Common Area thereon) at any time during such Department Store's Operating Period when it is required to operate as provided in "Operation Article 23 Department Store Operating Periods," by fire, windstorm or other casualty required to be insured against hereunder, such Department Store shall promptly and diligently rebuild, repair and restore such Building and



Improvements so that there will then be substantially the same number of square feet of Floor Area on its Tract, in the same location as presently shown on Exhibit "A", and of the same general appearance, type and quality, in as good condition and constituting an integrated Building and Common Area, as existed prior to the damage or destruction, and such Department Store shall resume its operation on its Tract for the remainder of its Operating Period. In the event of any such destruction or damage to any Department Store's Building after the expiration of such Department Store's Operating Period, such Department Store shall not be obligated to rebuild, repair and restore, but if it elects to do so, its Tract shall be and remain subject to the terms, provisions and restrictions of "Operation Article 23 Department Store Operating Periods". Notwithstanding anything to the contrary contained herein, no Department Store shall be required to reopen for business with the public during the period after November 1 of any year to January 2 of the succeeding year (except that Wilson shall not be required to reopen during the period after November 15 of any year to March 1 of the succeeding year), during the period from May 1 to August 1 of any year, or during the thirty (30) day period prior to Easter Sunday.

21.4 Any Building or other Improvements required to be rebuilt, repaired and restored by said Department Store pursuant to this Operating Agreement shall be rebuilt, repaired and restored and ready for occupancy with due diligence, not to exceed eighteen (18) months from the time when the loss or destruction occurred (except where such repairs and restoration amounts to less than One Hundred Thousand Dollars [\$100,000.00] in cost, in which event the same shall be completed and ready for occupancy within sixty [60] days after such occurrence); subject, however, to unavoidable delays stipulated under the provisions of "General Article 28 Force Majeure".

21.5 Any repair, reconstruction or replacement of any Building or other Improvements performed by any Party pursuant to this Article, shall be performed in accordance with the following requirements:

- (1) Plans and Specifications therefor (not previously submitted) in connection with the original construction of the Shopping Center shall be submitted by the Party performing such repair, reconstruction or replacement to the other Parties for approval or information purposes, as the case may be, on the same terms and conditions as provided for submission of Plans and Specifications for original construction under Paragraphs 2.1, 2.2 A and B, 2.3 and 3.1 of this Operating Agreement;
- (2) The Buildings or other Improvements being restored shall be restored as nearly as practicable to the condition existing just prior to the occurrence of such casualty, and shall be at least of equal value per square foot and at least as usable for its intended purpose as such Building or other Improvements were just prior to the occurrence of such casualty;

- (3) Substantially the same public entrances in relation to location on the Enclosed Mall shall exist as existed just prior to the happening of such casualty; and
- (4) Such repair, reconstruction and replacement shall be done in conformity with the provisions of this Operating Agreement concerning initial construction.

21.6 In the event any Party shall not be required to rebuild and restore its damaged Building or other Improvements under the provisions of this Article, and it does not, in fact, make such restoration, such Party shall clear its Tract of all debris and hazardous conditions, and shall leave its Tract in a clean, safe and sightly condition; provided, however, that in no event shall any Party have the right to withdraw its Tract or any portion thereof from the Parking Area, ring road or access roads, or other Common Areas at any time during the Term of this Operating Agreement, and in the event of any such damage or destruction caused by fire or other casualty required to be insured against hereunder, such Party shall cause that portion of its Tract which is devoted to use as part of the Parking Area, ring road, access roads or other Common Areas to be repaired and restored to the condition the same were in immediately prior to the occurrence of such damage and destruction, and thereafter to be maintained in such condition and as part of the Parking Area and other Common Areas during the remaining Term of this Operating Agreement in accordance with the terms hereof; provided, further, however, that the cost of repair and maintenance of the Parking Area and other Common Areas on any such Tract shall be borne and paid for by the remaining Parties and such Party which has withdrawn its Tract shall have no responsibility in connection with the repair and maintenance of the portions of the Parking Area and other Common Areas which remain on its Tract.

#### Operation

### Article 22 Developer Operating Period

#### Paragraph

22.1 Provided at least two (2) Major Department Stores shall not be in default under their respective operating covenants and shall be open and operating their respective Department Stores as hereinafter set forth in Article 23 of this Operating Agreement, Developer shall continuously operate the Developer Tract and the Developer Buildings and Enclosed Mall thereon as a first-class multi-unit retail and



commercial facility (being the Shopping Center less each Department Store Tract and each Department Store Improvements) containing at least 250,000 square feet of Gross Leasable Area, and shall use its best efforts to cause the Developer Buildings to be occupied and operated in accordance with the standards set forth in Article 12 of this Operating Agreement, for a period of twenty (20) years from and after the Opening Date of the Shopping Center, and for so long thereafter as at least two (2) of said Major Department Stores are using their respective Tracts and Buildings thereon for retail purposes customarily found in such an enclosed mall regional shopping center, but in no event for a period of longer than sixty (60) years from the Opening Date.

22.2 The provisions of this Article shall be subject to all the provisions of this Operating Agreement, including, without limitation, the provisions of "General Article 28 Force Majeure", "General Article 29 Eminent Domain", "Operation Article 11 Temporary Cessation of Business", and "Operation Article 21 Improvements Destruction".

22.3 The Parties acknowledge that damages for the breach of the operating covenants contained in this Article 22 may be difficult to ascertain. Accordingly, the Department Stores shall be entitled not only to damages but also to injunctive relief to enforce the foregoing operating covenants against Developer and to restrain and enjoin any breach or threatened breach thereof.

#### Operation

#### Article 23 Department Store Operating Periods

##### Paragraph

23.1 Provided (i) the Developer shall not be in default under its operating covenant set forth in Article 22 hereof, (ii) Dillard is open and operating its Department Store under its operating covenant set forth in this Article 23, and (iii) tenants and operators occupying at least sixty percent (60%) of the Gross Leasable Area of the Developer Building upon the Enclosed Mall are conducting business, Penney covenants and agrees with Developer, its successors and assigns, that (a) Penney shall, for a period of fifteen (15) years following the Opening Date of the Penney Department Store Building (the "Penney Operating Period"), remain open and continuously operate, or cause to be kept open and continuously operated, a retail department store in the Penney Department Store Building on the Penney Tract, containing a Floor Area at least equal to that specified in Paragraph 3.1 hereof, under a trade name which includes the word "Penney" or "Penney's" or under such other trade name as is used by the majority of its stores in the State of Kansas, and (b) the Penney Tract and Buildings thereon shall not be used for any use or purpose other than

that specified in clause (a) of this sentence during such fifteen (15) year period (except the Penney TBA permitted pursuant to Paragraph 3.1 hereof); provided, however, that if such occupancy of the Developer Building falls below sixty percent (60%), Penney nevertheless shall remain open and continue to operate and observe and perform its operating covenant contained herein and shall not cease, or exercise any right to cease, operating unless such condition continues for more than one (1) year (without any extension for Force Majeure) after Penney has given written notice to Developer and to any mortgagee of the Developer Tract entitled thereto pursuant to Paragraph 34.12 hereof 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 Developer Building to the required minimum of sixty percent (60%). In addition, Penney further covenants and agrees that for the next ten (10) years of the Term of this Operating Agreement, after the expiration of said fifteen (15) year Operating Period, so long as at least one (1) of the Dillard and Ward Buildings is being used for retail purposes customarily found in an enclosed mall regional shopping center, and at least sixty percent (60%) of the Gross Leasable Area in the Developer Buildings L, P, K, Q, J, R, H and G, as shown on the Plot Plan, are being operated for retail purposes, then Penney, its successors and assigns, shall not use the Penney Department Store Building or attached Additional Store Building or Penney Tract for any use or purpose other than retail purposes as customarily found in an enclosed mall regional shopping center; and thereafter, during the remaining Term of this Operating Agreement, so long as both of the Dillard and Ward Buildings are being used for retail purposes customarily found in an enclosed mall regional shopping center, and at least sixty percent (60%) of the Gross Leasable Area in the Developer Buildings L, P, K, Q, J, R, H and G, as shown on the Plot Plan, are being operated for retail purposes then Penney, its successors and assigns, shall not use the Penney Department Store Building or attached Additional Store Building or Penney Tract for any use or purpose other than retail purposes as customarily found in an enclosed mall regional shopping center. Nothing contained in this Article 23 shall be construed as requiring Penney to operate or use the Penney Buildings following expiration of the Penney Operating Period. Nothing contained in this Article 23 shall require Penney to operate or utilize any portion of the Penney Buildings for a TBA operation.

23.2 Provided (i) the Developer shall not be in default under its operating covenant set forth in Article 22 hereof, (ii) at least one (1) other Major Department Store is open and operating under its operating covenant set forth in this Article 23, and (iii) tenants and operators occupying at least sixty percent (60%) of the Gross Leasable Area of the Developer Building upon the Enclosed Mall are conducting business, Ward covenants and agrees with Developer, its successors and assigns, that (a) Ward shall, for a period of fifteen (15) years following the Opening Date of the Ward Department Store Building (the "Ward Operating Period"), remain open and continuously operate, or cause to be kept open and continuously operated, a retail department store in the Ward Department Store Building on the Ward Tract, containing a Floor Area at least equal to that specified in Paragraph 3.1 hereof, under a trade name which includes the words "Montgomery



Ward" or the word "Ward" or under such other trade name as is used by the majority of its stores in the State of Kansas, and (b) the Ward Tract and Buildings thereon shall not be used for any use or purpose other than that specified in clause (a) of this sentence during such fifteen (15) year period; provided, however, that if such occupancy of the Developer Building falls below sixty percent (60%), Ward nevertheless shall remain open and continue to operate and observe and perform its operating covenant contained herein and shall not cease, or exercise any right to cease, operating unless such condition continues for more than one (1) year (without any extension for Force Majeure) after Ward has given written notice to Developer and to any mortgagee of the Developer Tract entitled thereto pursuant to Paragraph 34.12 hereof 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 Developer Building to the required minimum of sixty percent (60%). In addition, Ward further covenants and agrees that for the next ten (10) years of the Term of this Operating Agreement, after the expiration of said fifteen (15) year Operating Period, so long as at least one (1) of the Penney and Dillard Buildings is being used for retail purposes customarily found in an enclosed mall regional shopping center, and at least sixty percent (60%) of the Gross Leasable Area in the Developer Buildings (exclusive of Building F shown on the Plot Plan) is being operated for retail purposes, then Ward, its successors and assigns, shall not use the Ward Department Store Building or Additional Building or Ward Tract for any use or purpose other than retail purposes as customarily found in an enclosed mall regional shopping center; and thereafter, during the remaining Term of this Operating Agreement, so long as both of the Penney and Dillard Buildings are being used for retail purposes customarily found in an enclosed mall regional shopping center, and at least sixty percent (60%) of the Gross Leasable Area in the Developer Buildings (exclusive of Building F shown on the Plot Plan) is being operated for retail purposes, then Ward, its successors and assigns, shall not use the Ward Department Store Building or Additional Building or Ward Tract for any use or purpose other than retail purposes as customarily found in an enclosed mall regional shopping center. Nothing contained in this Article 23 shall be construed as requiring Ward to operate or use the Ward Buildings following expiration of the Ward Operating Period. Nothing contained in this Article 23 shall require Ward to operate or utilize any portion of the Ward Buildings for a TBA operation.

23.3 Provided (i) the Developer shall not be in default under its operating covenant set forth in Article 22 hereof, (ii) at least one (1) of Penney and Ward is open and operating its Department Store under its operating covenant set forth in this Article 23, and (iii) tenants and operators occupying at least sixty percent (60%) of the Gross Leasable Area of the Developer Building upon the Enclosed Mall are conducting business, Dillard covenants and agrees with Developer, its successors and assigns, that (a) Dillard shall, for a period of fifteen (15) years following the Opening Date of the Dillard Department Store Building (the "Dillard Operating Period"), remain open and continuously operate, or cause to be kept open and continuously operated, a retail department store in

the Dillard Building on the Dillard Tract, containing a Floor Area at least equal to that specified in Paragraph 3.1 hereof, under a trade name which includes the word "Dillard" or under such other trade name as is used by the majority of its stores in the State of Kansas, and (b) the Dillard Tract and Building shall not be used for any other use or purpose during such fifteen (15) year period; provided, however, that if such occupancy of the Developer Building falls below sixty percent (60%), Dillard nevertheless shall remain open and continue to operate and observe and perform its operating covenant contained herein and shall not cease, or exercise any right to cease, operating unless such condition continues for more than one (1) year (without any extension for Force Majeure) after Dillard has given written notice to Developer and to any mortgagee of the Developer Tract entitled thereto pursuant to Paragraph 34.12 hereof 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 Developer Building to the required minimum of sixty percent (60%). In addition, Dillard further covenants and agrees that for the next ten (10) years of the Term of this Operating Agreement, after the expiration of said fifteen (15) year Operating Period, so long as at least one (1) of the Penney and Ward Buildings is being used for retail purposes customarily found in an enclosed mall regional shopping center, and at least sixty percent (60%) of the Gross Leasable Area in the Developer Buildings (exclusive of Building F as shown on the Plot Plan) is being operated for retail purposes, then Dillard, its successors and assigns, shall not use the Dillard Building or Dillard Tract for any use or purpose other than retail purposes as customarily found in an enclosed mall regional shopping center; and thereafter, during the remaining Term of this Operating Agreement, so long as both of the Penney and Ward Buildings are being used for retail purposes customarily found in an enclosed mall regional shopping center, and at least sixty percent (60%) of the Gross Leasable Area in the Developer Buildings (exclusive of Building F as shown on the Plot Plan) is being operated for retail purposes, then Dillard, its successors and assigns, shall not use the Dillard Building or Dillard Tract for any use or purpose other than retail purposes as customarily found in an enclosed mall regional shopping center. Nothing contained in this Article 23 shall be construed as requiring Dillard to operate or use the Dillard Building following expiration of the Dillard Operating Period.

23.4 Provided (i) the Developer shall not be in default under its operating covenant set forth in Article 22 hereof, (ii) at least one (1) Major Department Store is open and operating its Department Store under its operating covenant set forth in this Article 23, and (iii) tenants and operators occupying at least sixty percent (60%) of the Gross Leasable Area of the Developer Building upon the Enclosed Mall are conducting business, Wilson covenants and agrees with Developer, its successors and assigns, that (a) Wilson shall, for a period of fifteen (15) years following the Opening Date of the Wilson Department Store Building (the "Wilson Operating Period"), remain open and continuously operate, or cause to be kept open and continuously operated, a catalog showroom department store in the Wilson Building on the Wilson Tract,



of the kind operated by Wilson in a majority of its stores in the States of Kansas and Oklahoma, containing a Floor Area at least equal to that specified in Paragraph 3.1 hereof, under a trade name which includes the word "Wilson" or under such other trade name as is used by the majority of its stores in the States of Kansas and Oklahoma, and (b) the Wilson Tract and Building shall not be used for any other use or purpose during such fifteen (15) year period; provided, however, that if such occupancy of the Developer Building falls below sixty percent (60%), Wilson nevertheless shall remain open and continue to operate and observe and perform its operating covenant contained herein and shall not cease, or exercise any right to cease, operating unless such condition continues for more than one (1) year (without any extension for Force Majeure) after Wilson has given written notice to Developer and to any mortgagee of the Developer Tract entitled thereto pursuant to Paragraph 34.12 hereof 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 Developer Building to the required minimum of sixty percent (60%). In addition, Wilson further covenants and agrees that for the next ten (10) years of the Term of this Operating Agreement, after the expiration of said fifteen (15) year Operating Period, so long as at least one (1) Major Department Store Building is being used for retail purposes customarily found in an enclosed mall regional shopping center, and at least sixty percent (60%) of the Gross Leasable Area in the Developer Buildings (exclusive of Building F as shown on the Plot Plan) is being operated for retail purposes, then Wilson, its successors and assigns, shall not use the Wilson Building or Wilson Tract for any use or purpose other than retail purposes as customarily found in an enclosed mall regional shopping center; and thereafter, during the remaining Term of this Operating Agreement, so long as at least two (2) of the Major Department Store Buildings are being used for retail purposes customarily found in an enclosed mall regional shopping center, and at least sixty percent (60%) of the Gross Leasable Area in the Developer Buildings (exclusive of Building F as shown on the Plot Plan) is being operated for retail purposes, then Wilson, its successors and assigns, shall not use the Wilson Building or Wilson Tract for any use or purpose other than retail purposes as customarily found in an enclosed mall regional shopping center. During the Wilson Operating Period and for so long thereafter as Wilson or its successor is operating in the Wilson Department Store Building, Wilson shall pay to Developer the Additional Annual Payment as provided in the Supplemental Agreement of even date herewith between Developer and Wilson. Wilson hereby grants to Developer the exclusive and irrevocable continuing right and option (but not the obligation) to purchase the Wilson Tract and all Improvements thereon, in accordance with the terms set forth in the Supplemental Agreement of even date herewith between Developer and Wilson and incorporated herein by this reference, which option may be exercised by Developer at any time after the expiration of the Wilson Operating Period, or at any time prior thereto in the event of any breach or default by Wilson in the performance and observance of its foregoing operating covenant or in the event of any breach or default by Wilson under any mortgage upon the Wilson Tract or under any lease under which Wilson holds possession of the Wilson Tract. This right and option to purchase the Wilson Tract and Improvements shall be in addition to all other rights and remedies of Developer against Wilson in the event of any breach or default by Wilson in the performance and observance of its foregoing operating covenant. Nothing contained in this Article 23 shall be construed as requiring Wilson to operate or use the Wilson Building following expiration of the Wilson Operating Period.

23.5 Any reference in this Operating Agreement to the Department Store Operating Periods or operating covenants shall refer only to the periods during which each of the Department Stores are required to operate under the first sentence of each of Paragraphs 23.1, 23.2, 23.3 and 23.4.

23.6 Nothing herein contained shall be deemed to regulate in any way the manner of operating of the business being conducted by each Department Store or the hours or days of such operation.

23.7 The provisions of this Article shall be subject to all the provisions of this Operating Agreement, including, without limitation, the provisions of "General Article 28 Force Majeure", "General Article 29 Eminent Domain", "Operation Article 11 Temporary Cessation of Business", and "Operation Article 21 Improvements Destruction".

23.8 The Parties acknowledge that damages for the breach of any of the operating covenants contained in this Article 23 may be difficult to ascertain. Accordingly, Developer shall be entitled not only to damages but also to injunctive relief to enforce the foregoing operating covenants against each Department Store and to restrain and enjoin a breach or threatened breach thereof.

### P A R T T H R E E

#### Reciprocal Easements

#### Article 24 Ingress and Egress

##### Paragraph

24.1 Developer hereby grants to each Department Store for the use of each said Department Store and all its Permittees, in common with each other Party and its Permittees, and each said Department Store hereby grants to Developer and each other Department Store for the use of Developer and each Department Store and all their respective Permittees, in common with each other Party and its Permittees (and in common with any and all other persons, from time to time, lawfully entitled to use the same) mutual, non-exclusive and reciprocal easements in, to and over the Common Area and the Enclosed Mall located upon the Developer Tract and the Future Department Store Tract and the Common Area located upon each Department Store Tract, respectively, for the use and enjoyment of the various common facilities for their intended purposes, as shown on the Plot Plan. Such easements shall be, without limiting the generality of the foregoing sentence, for access and ingress and egress to, from and among all Tracts of all Parties to this Operating Agreement (i.e., the Total Development Tract), for the parking of vehicles and the passage of vehicular and pedestrian traffic upon the Common Area and among all such Tracts (including, without limitation, reasonable access between the Shopping Center Tract and each of the Reserve Tracts, consistent with good traffic control and subject to the provisions of Paragraph 4.1(4) of this Operating Agreement), pedestrian traffic in the Enclosed Mall, and for the doing of such other things as are authorized or required to be done upon or within the Common Area and the Enclosed Mall, and for the doing of such other things as are authorized or required to be done upon or within the Common Area and the Enclosed Mall pursuant to this Operating Agreement and as shown on the Plot Plan. It is understood and agreed that all such easements created and provided for hereunder shall be appurtenant to all such Tracts, including both the



Shopping Center Tract and all component Tracts thereof and the Reserve Tracts, and likewise shall be a servitude upon all such Tracts. A major public entrance to each Department Store Building from the Enclosed Mall, to permit pedestrian traffic to, from and between each such Department Store Building and the Enclosed Mall, shall be maintained by each such Department Store at all times during the Term of this Operating Agreement.

24.2 The easements granted in Paragraph 24.1 of this Operating Agreement shall terminate upon the termination of this Operating Agreement, except that the easements for vehicular and pedestrian traffic over, upon and across those strips of land which constitute the ring road and access roads, shown crosshatched on the Plot Plan, Exhibit "A", (hereinafter referred to collectively as the "Ring Road") shall remain and continue in full force and effect throughout the Term of this Operating Agreement including any renewals or extensions thereof and thereafter so long as any of the Buildings, or any replacements thereof, on the Shopping Center Tract shall stand; provided, however, the grantors of such easements reserve the right at any time and from time to time after the expiration of the Term of this Operating Agreement to change the location of all or any portion of the Ring Road located on their respective Tracts, provided that (i) such relocation shall be made at the sole cost and expense of the grantor, (ii) the use of the Ring Road for pedestrian and vehicular traffic is not unreasonably restricted or materially impaired by such relocation, (iii) the quality of construction and the width of the relocated Ring Road shall be substantially similar to the portion being relocated, and (iv) the relocation shall be carried out in such manner as to cause the least possible interference with the use of the Ring Road; and provided, further, that after the expiration of the Term of this Operating Agreement the grantors shall have no obligation to maintain or repair the Ring Road on their respective Tracts and any grantee shall have the right to enter upon the Tract of the grantor for the purpose of maintaining and repairing the Ring Road at such grantee's sole cost and expense, and that any grantee entering upon the Tract of a grantor to effect such maintenance and repair shall defend and save harmless the grantor from all loss, liability, cost and expense incurred in connection with the grantee's exercise of such right. At the request of any Party to this Operating Agreement, the Parties shall execute a written agreement more particularly identifying and describing the aforesaid Ring Road easement by metes and bounds.

24.3 In the event the whole, or any part, of the Common Area or the Enclosed Mall upon any of the Tracts shall be taken for any public or quasi-public use under any governmental law, ordinance, or regulation, or by right of Eminent Domain, or by private purchase in lieu thereof, then, and in any such event, the grantee of the easements granted in Paragraph 24.1 of this Article shall not share in any award, compensation or other payment received by the grantor for such taking as to that portion of the land so taken which is subject to said easements, and such award, compensation or other payment shall belong solely and entirely to such grantor, and such grantor shall have no further liability to the other Parties hereunder for the loss of such easements, or portion thereof, located upon the land so taken; however, each grantee shall have the right to pursue its own award against the condemnor for the taking of such easements.

24.4 Each Party hereby further grants to each other Party, subject to the conditions contained in this Article, the non-exclusive right to use (and easements in, to, over, under and across) the Common Area and the Enclosed Mall for the purpose of performing maintenance of any Common Area Improvements pursuant to the provisions of this Operating Agreement.

24.5 The Developer shall promulgate rules and regulations with respect to the use of the Common Areas which shall be acceptable to the Department Stores.

#### Reciprocal Easements

#### Article 25 Utilities

##### Paragraph

25.1 Developer hereby grants to each Department Store for its use in common with Developer, mutual, non-exclusive and reciprocal easements in, to, over and under the Common Area located upon the Developer's Tract and the Future Department Store Tract, and in, to, over and under any portion of the Reserve Tracts which is outside of the Permissible Building Area on the Reserve Tracts, for the installation, operation, maintenance and repair of sewers, (including underground storm sewers for the drainage of roof and surface waters from each said Department Store Tract) water mains, gas mains, electric power lines, telephone lines and all other Common Utility Facilities (all of which shall be underground) serving the Common Area and the Improvements located in the Shopping Center, all of which shall be located and installed as shown in the utility plan which constitutes a part of the Plans and Specifications; provided, however, that in the use of the said easements, each said Department Store shall not unreasonably interfere with the use of the Developer's Tract or the Future Department Store Tract or any Reserve Tract, and said easements shall be subject to relocation as hereinafter provided. Such easements shall remain and continue in full force and effect throughout the Term of this Operating Agreement, including any renewals or extensions thereof, and thereafter so long as any of the Buildings served thereby, or any replacements thereof, on the Total Development Tract shall stand, subject to the terms of Paragraph 25.3 of this Operating Agreement.



25.2 Each Department Store hereby grants to Developer and each other Department Store, for their use in common with Developer and each Department Store, mutual, non-exclusive and reciprocal easements in, to, over and under the Common Area located upon its Tract for the installation, operation, maintenance and repair of sewers (including underground storm sewers for the drainage of roof and surface waters from the Developer's Tract) water mains, gas mains, electric power lines, telephone lines and all other Common Utility Facilities (all of which shall be underground) serving the Common Area and Improvements located on the Total Development Tract, all of which shall be located and installed as shown in the utility plan which constitutes a part of the Plans and Specifications; provided, however, that in the use of the said easements, Developer shall not unreasonably interfere with the use of each said Department Store Tract and said easements shall be subject to relocation as hereinafter provided. Such easements shall remain and continue in full force and effect throughout the Term of this Operating Agreement, including any renewals or extensions thereof, and thereafter so long as any of the Buildings served thereby, or any replacements thereof, on the Total Development Tract shall stand, subject to the terms of Paragraph 25.3 of this Operating Agreement.

25.3 The easements contained in Paragraphs 25.1 and 25.2 of this Article, shall be subject to the following terms and conditions:

- (1) The grantor of any of the utility easements granted in said Paragraphs 25.1 and 25.2 shall have the right, at any time, and from time to time, to relocate any utility pipes, lines, conduits, mains, sewers, related equipment and any Common Utility Facilities then upon the Tract of said grantor, upon the condition that:
  - (a) Such right of relocation shall be exercisable only after thirty (30) days' prior written notice of said grantor's intention to relocate shall be given to the grantee of such utility easement (or easements);
  - (b) Such relocation shall not interrupt or diminish any utilities to the Buildings or other Improvements then located upon such grantee's Tract (except momentarily during non-business hours as reasonably necessary to switch from existing utility facilities to relocated utility facilities);
  - (c) Such relocation shall not reduce or unreasonably impair any usefulness or function of such utility facilities (except momentarily during non-business hours as reasonably necessary to switch from existing utility facilities to relocated utility facilities);

- (d) All costs and expenses of such relocation shall be borne by said grantor; and
- (2) In the event of abandonment or non-use of any such utility easements by the grantee thereof for a continuous period of twelve (12) months, the easements so abandoned, or in non-use, shall expire upon the day after such twelve (12) month period.

Reciprocal Easements

Article 26  
Common Building Component

Paragraph

26.1 Each Party hereby grants to each other Party the non-exclusive right, privilege and easement to use such portions of the Tract of the grantor and the Building Improvements constructed thereon, as shown on the Plot Plan, Exhibit "A", and approved Plans and Specifications:

- (1) for the construction or erection, maintenance, repair and replacement of the Common Building Components, such as, but not limited to, footings, foundations, supports and walls;
- (2) for the attachment and support of Building Improvements (including the Enclosed Mall) constructed on the grantee's Tract by and between Building Improvements constructed on the grantor's Tract and for the maintenance, repair and replacement of such Building Improvements of the grantor required for such attachment and support; provided the manner of attachment shall be designed and constructed in accordance with good construction practice in a manner customary for Improvements of such type and in a manner not to impose any load bearing capacity on grantor's Building Improvements;
- (3) for the construction, maintenance, repair and replacement of underground footings for the purpose of supporting Building Improvements of the grantee which encroach upon the Tract of the grantor, provided such encroachments do not encroach more than six feet (6'); and



- (4) for the installation, maintenance, repair and replacement of any Improvements and signs, lights and entrances, marquees, balconies, canopies, decorative facia or other overhangs encroaching upon the Tract of the grantor, provided such encroachments do not encroach more than six feet (6'), and are attached to Buildings constructed by the grantee, except as otherwise shown on the Plot Plan, Exhibit "A".

While it is the intention of the Parties to confine their Improvements to the limits of their respective Tracts, it is recognized that this result is not always achieved in such a multi-ownership shopping center development project. Accordingly, each Party grants to each other Party an easement permitting the maintenance of minor encroachments over and across the grantor's Tract, resulting from inadvertent errors, if any, in construction of Improvements, to the extent that such encroachments shall exist after completion of all construction, provided that such encroachments do not encroach more than six feet (6') in any event.

26.2 The Plans and Specifications showing the Improvements described in this Article shall be submitted to the grantor of the easements for approval thereof by the grantor, which approval shall not be unreasonably withheld, delayed or denied. Such approval of Plans and Specifications shall constitute designation by such grantor of the portions of its Tract and Improvements to be used for the purposes described.

26.3 The grantee and the grantor shall share proportionately the cost of construction, maintenance, repair and replacement of any common footings constructed by either of them (which cost shall be approved in advance by the Parties sharing therein), in accordance with that ratio which the load contributed by the Improvements of each of them bears to the total load on such common footings and shall use due care in the exercise of the rights here granted. Whenever the exercise of said rights requires the grantee to enter upon the Tract or Improvements of the grantor, such entry shall be subject to the prior consent of the grantor (which consent shall not be unreasonably withheld, delayed or denied) as to the methods and timing in the exercise of said rights, and the grantee shall, at its sole expense, promptly repair, replace or restore any and all Improvements of the grantor which have been damaged or destroyed by the grantee in the exercise of said rights. Grantee shall hold grantor harmless from all loss, liability, cost or expense incurred in connection with the exercise of said rights.

26.4 The grantor of each of the easements granted in this Article shall, upon the request of the grantee, execute and deliver to said grantee an instrument, in recordable form, legally sufficient to evidence the grant of said easement, the location thereof and such other conditions to the grant of said easement, as may have been accepted by said grantee and approved by said grantor.

26.5 The Common Building Component and encroachment easements granted under this Article shall remain and continue in effect as long as such Common Building Component improvements and encroachments or any replacements thereof remain in place.

PART FOUR

General

Article 27 Land Covenants

Paragraph

27.1 Except as otherwise expressly provided, all covenants and agreements contained in this Operating Agreement, affecting the use and maintenance of the Total Development Tract, shall be and constitute covenants running with the land and shall bind and inure to the benefit of each Party, its successors and assigns; however, the same shall not constitute conditions, and no breach or violation thereof shall result in any reversion or loss of title to the Tract of any Party. All easements granted hereunder shall be appurtenant to and run with the grantee's Tract.

General

Article 28 Force Majeure

Paragraph

28.1 The time within which any Party hereto shall be required to perform any act under this Operating Agreement, other than the payment of money, shall be extended by a period of time equal to the number of days during which the performance of such act is unavoidably prevented or delayed, retarded or hindered by Acts of God, fire, earthquake, floods, explosion, actions of the elements, war, declared or undeclared (including "police action"), invasion, insurrection, riot, mob violence, sabotage, inability to procure labor, equipment, facilities, materials or strikes, lockouts, actions of labor unions, condemnation, requisition laws, orders of government, or civil or military authorities, or any other cause, whether similar or dissimilar to the foregoing, not within the reasonable control of such Party ("Force Majeure"), excluding a Party's inability to obtain required financing. Notwithstanding the foregoing, unless the Party entitled to such extension



shall give notice to the other Parties 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.

General

Article 29 Eminent Domain

Paragraph

29.1 In the event that all, or a substantial part (more than twenty-five percent) of the Enclosed Mall or the Floor Area in any Building, or in the event that all or a substantial part (more than 1,000 automobile Parking Spaces) of the Common Area, all on the Developer Tract, or a majority of the existing major entrances or driveways on the Developer's Tract, as shown on the Plot Plan, should be taken for any public or quasi-public use under any governmental law, ordinance or regulation, or by right of Eminent Domain, or by voluntary conveyance in lieu thereof, then, and in any of such events, Developer shall promptly notify the Department Stores of the condemning authority's intention to take such property and this Operating Agreement and the Term hereof may be terminated by any Department Store as to its Tract as provided in Paragraph 29.2, except (a) that in the case of such taking of a substantial part of the Common Area or entrances or driveways on the Developer Tract, this Operating Agreement shall not terminate if the Developer is willing and able to provide for the replacement of the Parking Spaces lost by such taking as hereinafter more particularly provided in subparagraph 29.6(b) of this Article or for alternate entrances reasonably satisfactory to all Parties, as the case may be, and (b) that, notwithstanding any such termination, the reciprocal easements created hereunder shall survive to the extent provided in Paragraph 24.2. The Parties as to whom this Operating Agreement has been terminated due to any such taking shall thereupon be released from any further liability under this Operating Agreement, except as provided in Paragraph 29.7 hereof. It is understood and agreed that the limitation of access which amounts to less than a total permanent closing of an entrance or driveway to the Shopping Center on any Tract shall not constitute a "taking" of such entrance or driveway for purposes of this Operating Agreement.

29.2 At the option of any Department Store, such termination pursuant to Paragraph 29.1 shall be signified and effectuated as to its Tract by notice given to the other Parties hereto within one hundred and eighty (180) days after any such taking, and such termination shall take effect automatically thirty (30) days following the giving of such notice.

29.3 In the event that all, or a substantial part (more than twenty-five percent) of the Floor Area in any Building, or in the event that all or a substantial part (more than 25% of the automobile Parking Spaces) of the Common Area, all on any Department Store Tract, or a majority of the existing major entrances or driveways on such Department Store Tract, if any, as shown on the Plot Plan, should be taken for any public or quasi-public use under any governmental law, or ordinance or regulation, or by right of Eminent Domain, or by voluntary conveyance in lieu thereof, then, and in any of such events, the Department Store whose Tract is the subject of any such taking shall promptly notify the other Parties hereto of the condemning authority's intention to take such property and this Operating Agreement and the Term hereof may be terminated by any such Department Store as to its Tract as provided in Paragraph 29.4, except (a) that in the case of such taking of a substantial part of the Common Area or entrances or driveways on any such Department Store Tract, this Operating Agreement shall not terminate as to such Department Store Tract if such Department Store or the Developer is willing and able to provide for the replacement of the Parking Spaces lost by such taking as hereinafter provided in subparagraph 29.6(b) of this Article, or for alternate entrances reasonably satisfactory to all Parties, as the case may be, and (b) that, notwithstanding any such termination, the reciprocal easements created hereunder shall survive to the extent provided in Paragraph 24.2. If it is Developer who provides for such replacement of Parking Spaces on such Department Store Tract, such Department Store shall be obligated to apply its award thereto. The Party as to whom this Operating Agreement has been terminated due to any such taking shall thereupon be released from any further liability under this Operating Agreement, except as provided in Paragraph 29.7 hereof. It is understood and agreed that the limitation of access which amounts to less than a total permanent closing of an entrance or driveway to the Shopping Center on any Tract shall not constitute a "taking" of such entrance or driveway for purposes of this Operating Agreement.

29.4 At the option of any Department Store whose Tract is so taken, such termination pursuant to Paragraph 29.3 shall be signified and effectuated as to its Tract by notice given to the other Parties hereto within one hundred and eighty (180) days after any such taking, and such termination shall take effect automatically thirty (30) days following the giving of such notice.



29.5 If this Operating Agreement is not terminated following a partial taking, all of its conditions and provisions shall continue in full force and effect; provided, however, that each Party shall, at such Party's sole expense, promptly begin and prosecute with diligence, the making of all necessary repairs, restorations and replacements to all Buildings and other Improvements (including the Enclosed Mall on the Developer Tract) on such Party's Tract which shall have been partially taken. All Parking Spaces taken in a partial taking shall be restored, either multi-level on such Party's Tract or upon available unimproved land, if any, which is owned by such Party and adjacent and contiguous to the Shopping Center, to provide at least the minimum index of Parking Spaces to Gross Leasable Area on each Party's Tract, as required by the provisions of "Operation Article 15 Common Area"; provided, however, that no multi-level parking shall be permitted without the approval of all Parties. The portion of the Shopping Center so remaining shall be a complete architectural unit with adequate Parking Spaces and Enclosed Mall in accordance with the provisions of this Operating Agreement.

29.6 In the event less than all of the Department Stores' Tracts are excluded herefrom, each Party still bound by this Operating 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 Common Area, to the replacement of the Parking Spaces lost by such taking with multi-level parking facilities at a location acceptable to each Party or toward the acquisition of contiguous land, acceptable to each Party, for parking purposes as otherwise provided in this Operating Agreement.

In the event of any such restoration or replacement, any such award or awards shall be deposited, disbursed and applied to such restoration or replacement in accordance with the terms of Paragraph 19.3 of this Operating Agreement, concerning the application and disposition of insurance proceeds, and the provisions of Article 21, concerning repair and restoration of Improvements after damage or destruction, to the extent that such provisions are applicable.

29.7 Any Department Store which shall have excluded its Tract from the operation and effect of this Operating Agreement, as aforesaid, will not thereafter, during the

remaining Term of this Operating Agreement, for so long as the Developer's Tract is being operated as a regional shopping center and one Department Store Tract is being utilized for retail purposes, use its Tract for any use or purpose other than retail purposes compatible with the adjacent operation of a first class regional shopping center on the Developer's Tract. If any Department Store which shall have excluded its Tract from the operation and effect of this Operating Agreement shall, at any time thereafter, conduct business on its Tract 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 Tract shall again become subject to the operation and effect of the use restrictions and reciprocal easements contained in this Operating Agreement.

#### General

#### Article 30 Assignment, Transfer and Mortgage

#### Paragraph

30.1 No transfer or conveyance by any Party of all or any part of its Tract or assignment of this Operating Agreement shall be deemed to release such Party from any of its obligations hereunder, except (i) as provided in this Article 30, (ii) that if any Department Store shall transfer or convey its entire Tract, such Department Store shall be released from all further liability arising under this Operating Agreement in respect of any period after the last to occur of (x) the date of such transfer or conveyance, (y) the expiration of such Department Store's operating covenants, as set forth in Section 23 of this Operating Agreement, and (z) the date such Department Store shall no longer have a possessory interest in its Tract, either as owner or lessee in possession, and (iii) that if Developer shall transfer or convey the Developer Tract at any time after the expiration of one (1) year after the Opening Date, Developer shall be released, relieved and discharged from all of its covenants, obligations and liabilities under this Operating Agreement, accruing after the date of such transfer or conveyance. Provided, however, that as a condition to such release, relief and discharge of Developer:

- (a) any purchaser or transferee of the Developer Tract shall have a net worth in excess of \$5,000,000 and shall be of good repute;
- (b) any purchaser or transferee of the Developer Tract shall either be experienced in the operation of shopping centers or shall agree to employ qualified professional management for the Shopping Center;



- (c) Developer shall have delivered to the other parties to this Operating Agreement, a duly executed and acknowledged copy, in recordable form, of the instrument by which the purchaser or transferee shall have agreed to be bound by all of the covenants of Developer under this Operating Agreement (subject to the terms of Paragraph 34.9 hereof), which instrument shall be reasonably satisfactory to counsel for the other Parties to this Operating Agreement, and
- (d) at the time Developer is to be released of all further liability hereunder, any and all amounts which shall then be due and payable by Developer to the other parties hereto shall be paid to such other parties hereto.

In the event that Developer transfers less than all of its Tract at any time and from time to time, then all owners of the Developer Tract shall be jointly and severally liable for the performance of all obligations imposed upon Developer under the terms of this Operating Agreement with respect to the whole or any part of the Developer Tract (subject to the terms of Paragraph 34.9 hereof).

Notwithstanding the aforesaid, (i) the Developer shall not transfer its interest in the Developer's Tract or any part thereof prior to the expiration of one (1) year following the Opening Date (except by way of mortgages or deeds of trust for purposes of financing the acquisition of the Developer Tract and the construction, development and operation of the Shopping Center thereon, including both interim and permanent financing), and (ii) any general partner in the Developer may dispose of its interest in the Developer and thereupon be released, relieved and discharged from all liability of Developer under this Operating Agreement, provided that until expiration of one (1) year after the Opening Date, any two of Herbert Simon, Melvin Simon and Towne West Developers shall remain general partners of Developer.

30.2 Notwithstanding anything to the contrary herein contained, if any Party shall (i) convey its Tract and assign its interest under this Operating 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 Tract by virtue of a lease made by the grantee, or lessee, as the case may be, or (ii) shall convey its Tract by way of a deed of trust or mortgage and retain its possessory interest in its Tract, then, in neither of such events, shall the assignee of this Operating Agreement under such sale and leaseback or lease and subleaseback, or any subsequent owner of its Tract, 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 and 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 Operating Agreement by it or fulfill-

ment of any condition of this Operating Agreement by such Party or its parent corporation shall be deemed the performance of such act or the fulfillment of such condition 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.

30.3 Notwithstanding anything to the contrary contained in this Operating Agreement, Developer may mortgage its Tract and/or sell and leaseback its Tract and, in conjunction therewith, may mortgage and/or assign (either absolutely or conditionally) all of its rights, interests and easements under this Operating Agreement to any such mortgagee or grantee. The mortgagee of the Developer Tract shall be liable for the performance of Developer's covenants and obligations hereunder only if and for so long as such mortgagee comes into and holds possession (or has a right to possession) of such Tract, but not before or after, and the lessor of such Tract shall be liable hereunder only if and for so long as such lessor comes into possession (or has a right to possession) of such Tract and holds the same, but not before or after. This Operating Agreement and the rights, interests and easements created hereunder shall be prior and superior to any mortgage or other lien upon or against the Developer Tract.

30.4 Notwithstanding anything to the contrary contained in this Operating Agreement, each Department Store may:

- (a) as part of its operation, lease portions of its Building or license departments thereof or grant concessions to other parties, subject to the provisions of Article 23 of this Operating Agreement;
- (b) lease or sell its Tract to any parent company who owns all of the outstanding shares of such Department Store or to any subsidiary corporation of such parent company or to any corporation which may succeed to the business of such Department Store or such parent company in the State in which the Shopping Center Tract 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 any such case, such Department Store shall be released from all further obligations under this Operating 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
- (c) mortgage its Tract and/or sell and leaseback or lease and subleaseback its Tract and, in connection with any such transaction, assign its interest in this Operating 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 Tract 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 Tract 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 Tract or a leasehold estate therein shall hold the same free of any obligation to operate a retail department store on such Tract, as set forth in Article 23 of this Operating Agreement, but subject to all other terms, provisions, covenants, conditions and restrictions contained in this Operating Agreement. In the event a mortgagee of any Department Store Tract or the purchaser under a sale and leaseback succeeds to the interest of such Department Store in said Tract, the obligations of such Department Store shall be binding upon such successor or any person claiming by, through or under such successor only during the period that it is in possession of such Tract, but nothing herein contained shall obligate any such successor, or any person claiming by, through or under such successor, to operate a retail department store on such Tract. Notwithstanding the previous portions of this clause (c), the Department Store deprived of possession of its Tract by reason of the foreclosure of such mortgage or delivery of deed in lieu of foreclosure or by reason of its failure to comply with such leaseback or subleaseback, shall remain liable for breach of its covenants and obligations under Article 23 of this Operating Agreement, and for the payment of any and all charges and sums of money provided for in the Supplemental Agreement involving such Department Store, in the event a transferee or successor comes into possession. This Operating Agreement and the rights, interests and easements created hereunder shall be prior and superior to any mortgage or other lien upon or against any Department Store Tract.

Wilson's right to lease, sell, mortgage, sell and leaseback or lease and subleaseback the Wilson Tract shall be subject to Developer's option to purchase the Wilson Tract as provided in Paragraph 23.4 of this Operating Agreement.

#### General

#### Article 31 Termination Rights

##### Paragraph

31.1 Upon the expiration or earlier termination of this Operating Agreement, in accordance with its provisions and conditions, all rights and privileges derived from, and all duties and obligations created and imposed by all provisions of this Operating Agreement shall terminate and thereafter cease to exist, except as otherwise provided in this Operating Agreement.

31.2 Such termination of this Operating Agreement, shall not limit or affect any remedy at law or in equity of any Party against any other Party, with respect to any liability or obligation arising, or to be performed under this Operating Agreement prior to the date of such termination.

31.3 Except as herein expressly provided, no breach of this Operating Agreement or default by any Party shall entitle any other Party to terminate or cancel this Operating Agreement, and the sole remedy of each Party hereto against the Party in default shall be by means of an injunction and/or an action for damages.

#### General

#### Article 32 Indemnity

##### Paragraph

32.1 Each Department Store shall indemnify, defend and hold Developer and each other Department Store harmless from and against any and all claims, actions, damages, liability and expense in connection with bodily injury, loss of life, personal injury or death to persons and damage to property, or any of them, occurring in or upon the Shopping Center, occasioned wholly or in part, by any negligent or willful act or omission of such indemnifying Department Store, its agents, contractors or employees. Developer shall indemnify, defend and hold each said Department Store harmless from and against any and all claims, actions, damages, liability and expense, in connection with bodily injury, loss of life, personal injury or death to persons, and damage to property, or any of them, occurring in or upon the Shopping Center, occasioned wholly or in part by any negligent or willful act or omission of Developer, its agents, contractors or employees. As respects any Party claiming the right to be indemnified hereunder, there shall be excepted from such indemnity any such claims, actions, damages, liability and expense arising solely or entirely from or as a result of the negligent or willful act or omission of the Party so claiming the right to be indemnified or the agents, contractors or employees of such Party. The Comprehensive General Liability Insurance furnished by the Parties hereto shall include contractual liability coverage recognizing this indemnity.



General

Article 33 Arbitration

Paragraph

33.1 Except as otherwise provided in this Operating Agreement, whenever there is any monetary dispute between any two Parties hereto, under the provisions of this Operating Agreement, not exceeding \$50,000.00 in amount, which cannot be settled by agreement of the said Parties, and if all Parties shall agree in writing, upon or after the occurrence of such dispute, to arbitrate such dispute, either Party desiring arbitration (hereinafter called "First Party") shall give the other Party (hereinafter called "Second Party") written notice to that effect, describing the matter in dispute to be determined by arbitration, and naming an arbitrator to act for First Party. Unless such matter shall be agreed upon between the Parties in the interim, the Second Party, within ten (10) days after receipt of such notice, shall name an arbitrator to act for Second Party by a written notice to First Party and, concurrently therewith, by notices, in writing, shall notify each of said arbitrators of their obligation to appoint a third arbitrator. The two arbitrators so appointed shall, within thirty (30) days thereafter, appoint a third arbitrator and make all necessary arrangements for conducting such arbitration.

33.2 If Second Party shall fail or refuse to name an arbitrator, the arbitrator appointed by First Party shall act as sole arbitrator, or, at his option, shall appoint an arbitrator to act for the Second Party. In the event the arbitrator appointed by First Party shall be the sole arbitrator, his decision shall be final and conclusive upon the Parties. In the event the three arbitrators are appointed in either of the manners set forth in this Article the decision of any two of said three arbitrators shall be final and conclusive upon the Parties. In the event the first two arbitrators appointed shall fail to appoint a third arbitrator within thirty (30) days of the appointment of the second arbitrator, or in the event any arbitrator appointed shall become incapacitated, die or resign, or refuse to act, at any time before the complete determination of the matter in dispute, a Judge of competent local jurisdiction shall appoint an arbitrator to fill the vacancy of the arbitrator not appointed or not acting.

33.3 The cost and expense of the arbitrators and the arbitration proceeding shall be paid and shared by the Parties equally. The decision of the arbitrators shall be in writing, a signed copy thereof shall be delivered to each Party and shall be made as promptly as possible after their appointment, but in no event, later than thirty (30) days after the date of appointment of the third arbitrator. If the said arbitrators so appointed do not make a binding decision within said thirty (30) day period, the appointment of the third arbitrator shall be deemed revoked, a new third arbitrator shall be appointed, as provided in Paragraph 33.1 of this Article, and the three arbitrators so appointed shall again act in the same manner and within the same time limits as though the third arbitrator had not previously been appointed.

33.4 Provided, however, notwithstanding anything to the contrary contained herein, no dispute shall be submitted to arbitration unless all Parties to such dispute agree in writing, upon or after the occurrence of such dispute, to submit the same to arbitration. Arbitration under this Operating Agreement shall be permissive and not mandatory. All remedies at law and in equity are hereby reserved.

#### General

#### Article 34 Miscellaneous

##### Paragraph

34.1 Recording. A fully executed and acknowledged counterpart of this Operating Agreement shall be recorded in its entirety in the public records of the county in which the Total Development Tract is located, immediately following execution of this Operating Agreement by all Parties. Developer shall effect such recording at its expense.

34.2 Parties not Partners. Nothing contained in this Operating Agreement shall be construed to make the Parties hereto partners or joint venturers, or to render any said Parties liable for the debts or obligations of the other, except as in this Operating Agreement expressly provided.

34.3 No Waiver. No delay or omission by any of the Parties in exercising any right or power accruing upon any non-compliance or failure of performance by any other Party under the provisions of this Operating Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver, by any of the Parties of any covenant, condition, provision or performance under this Operating Agreement, shall not be construed to be a waiver of any succeeding breach thereof, or of any other covenant, condition, provision or performance of this Operating Agreement.

34.4 Captions. The table of contents preceding this Operating Agreement; Article headings, captions and other similar designations are for convenience and reference only, and in no way define or limit the scope and content of this Operating Agreement, or in any way affect its provisions.

34.5 Governing Law. This Operating Agreement shall be governed by and construed in accordance with the laws of the State of Kansas.

34.6 Severable Provisions. In the event any provision, or any portion thereof, of this Operating Agreement, or the application thereof, to any person or circumstances, shall, to any extent, be held invalid or unenforceable, the remainder of this Operating Agreement, all of its other provisions and all portions thereof, and the application



thereof, to any other person or circumstances, shall be severed therefrom and shall not be affected thereby, and each such provision, and portion thereof, of this Operating Agreement shall be valid and enforceable to the fullest extent permitted by law.

34.7 Modification. No agreement shall be effective to add to, change, amend, modify, waive or discharge this Operating Agreement, in whole or in part, unless such agreement is in writing and signed by each Party.

34.8 Counterparts. This Operating Agreement is executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument.

34.9 Limited Liability of Developer and Exculpation of Partners. Notwithstanding anything contained in this Operating Agreement to the contrary, if at any time Developer shall fail to perform or pay any covenant or obligation on its part to be performed or paid hereunder, and as a consequence thereof any Department Store shall recover a money judgment against Developer, such judgment shall, to the extent provided by law, be a lien upon and shall be enforced against and satisfied out of (subject to the rights of any mortgagee or deed of trust holder whose lien predates the filing of the complaint which results in such judgment) only (i) the proceeds of sale produced upon execution of such judgment and levy thereon against Developer's interest in the Developer Tract and the Improvements thereon, (ii) the rents, issues or other income from such property receivable from the Developer Tract and the Developer Improvements, (iii) the consideration received by Developer from the sale of all or any part of Developer's interest in the Developer Tract and Improvements made after such failure of performance (which consideration shall be deemed to include any assets at any time held by Developer to the extent that the value of same does not exceed the proceeds of such sale), and (iv) any insurance proceeds or condemnation award payable as the result of any casualty to or condemnation of the Developer's Tract and/or Developer's Improvements. Neither Developer, its successors and assigns, nor any of the partners, general or limited, in the limited partnership referred to herein as "Developer" shall be personally liable to the Department Stores their successors and assigns, or to any other party, for the performance or payment of any covenant, obligation, liability or indebtedness of Developer hereunder or for any judgment thereon. No Department Store shall seek specific performance of any covenant or obligation by or against any partner in the Developer partnership hereunder, except to the extent that the same can be enforced in rem only against the Developer Tract and Improvements thereon. It is expressly understood and agreed that nothing in this Operating Agreement contained shall be construed as creating any personal liability whatsoever against the Developer or the partners in the Developer partnership. The Department Stores, their successors and assigns, and any other owner or holder of any claim or action against Developer under this Operating Agreement, or any indebtedness, obligation or liability of

Developer accruing hereunder, shall look solely to the Developer Tract, and any Improvements thereon and proceeds therefrom, for the payment and satisfaction of any such claim, action, indebtedness, obligation or liability, as aforesaid. The provisions of this Section 34.9 are not intended to relieve Developer from the performance of any of its obligations hereunder, but rather to limit Developer's liability as aforesaid, and to relieve and release the partners in the Developer partnership from any such liability whatsoever, as aforesaid; nor shall any of the provisions of this Section 34.9 be deemed to limit or otherwise affect any Department Store's right to obtain injunctive relief necessary to enforce other rights specifically granted to the Department Stores in this Operating Agreement. The provisions of this Section 34.9 also shall inure to the benefit of Developer's successors and assigns. For purposes of this Section 34.9, the Developer Tract shall be deemed to include the Future Department Store Tract unless and until such Future Department Store Tract has been conveyed and transferred as provided in Article 4 of this Operating Agreement.

34.10 Default. Unless otherwise provided in this Operating Agreement, no Party shall be deemed to be in default under this Operating Agreement, until such Party shall have been given written notice describing the nature of such impending default, and within fifteen (15) days after the receipt of such notice, or such longer period of time as may otherwise be provided in this Operating Agreement, shall have failed to commence to cure such impending default and to proceed diligently to complete the curing of such impending default as promptly as possible, utilizing all reasonable means to effectuate and expedite the curing of such impending default.

34.11 Agreement Conditional. This Operating 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 and environmental matters) in effect (i) at the time of recording of this Operating Agreement, (ii) at the time of commencement of construction of the Developer Improvements and/or Department Store Improvements and/or (iii) upon completion by each of the Department Stores of the footings and underground supports for their respective Buildings, 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 enjoyment of their rights under, this Operating Agreement, each Department Store may elect to terminate this Operating Agreement as to its Tract and require the repurchase of its Tract by Developer on the same terms and conditions as provided in Article 7 hereof. In the event of any such termination of this Operating Agreement by one or more Department Stores as to its or their Tract or Tracts, Developer shall have the right to purchase such Department Store Tract or Tracts on such terms, and no Department Store shall make any other sale or disposition of its Tract; provided, however, that such election must be



exercised by any such Department Store by giving written notice to Developer within thirty (30) days after the expiration of said four (4) month period or such termination right shall be deemed to have been waived by such Department Store. In the event any such Department Store so elects to require reconveyance and purchase by Developer, the provisions of Article 7 hereof shall be applicable. If no such laws, ordinances, rules, resolutions or regulations are in existence at any of the times set forth in clauses (i), (ii) and (iii) above in this Paragraph 34.11, then this Operating Agreement shall be and become absolute and unconditional. The conditions contained in this Paragraph 34.11 constitute conditions subsequent, and nothing herein contained shall impair, abrogate, limit, reduce, negate or otherwise affect the covenants and obligations of the Parties hereunder unless and until the occurrence of any of said conditions subsequent.

**34.12 Mortgagee Notice.** Each Party serving a notice of default under this Operating 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 Tract 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, provided such holder shall commence its efforts to remedy such default in good faith within such period of sixty (60) days.

**34.13 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 thirty (30) days' notice from any other Party, execute and deliver to such other Party a certificate in recordable form stating that this Operating Agreement is unmodified and in full force and effect or, if modified, that this Operating 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 Operating Agreement, and, if in default, specifying such default; and stating whether any of the conditions subsequent set forth in Paragraph 34.11 have occurred and, if so, stating which such conditions; and stating whether this Operating Agreement has become absolute and unconditional as provided in Paragraph 34.11.

**34.14 No Public Dedication.** No provision contained in this Operating Agreement shall be construed to grant any gift, dedication or any irrevocable rights to the general public or for any quasi-public purpose whatsoever, of, in, or to, any portion of the Shopping Center Tract or any Improvements therein; it being the intention of the Parties hereto that this Operating Agreement shall be strictly limited to, or for, the purposes herein expressed.

**34.15 No Third Party Beneficiary.** Except as herein specifically provided, no rights, privileges or immunities of any Party hereto shall inure to the benefit of any tenant, customer, employee or invitee of the Shopping Center or any other third party; nor shall any tenant,

customer, employee or invitee of the Shopping Center or any other third party be deemed to be a third party beneficiary of any of the provisions contained herein.

34.16 Ordinances. Each Party shall, at all times both during and after the completion of construction of its Improvements, 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 Improvements and with all Factory Mutual Insurance Companies.

34.17 Locative Adverbs. The locative adverbs, "herein", "hereunder", "hereto", "hereby", and like words whenever the same appear herein mean and refer to this Operating Agreement in its entirety and not to any specific Article, Paragraph, or subparagraph hereof, unless expressly otherwise provided.

34.18 Time and Standard of Consents and Approvals. Wherever in this Operating Agreement consent or approval of any Party is required such consent or approval shall not be unreasonably withheld, delayed or denied. Unless a different time limit is provided in this Operating Agreement, any consent or approval shall be given in writing within thirty (30) days following receipt of the request therefor (unless a longer period is permitted pursuant to this Operating Agreement) or the same shall be conclusively deemed to have been consented to, or approved of, as the case may be, provided that the request for any such consent or approval shall be in writing and shall expressly call for such consent or approval and shall expressly advise the Party receiving such request that such consent or approval shall be deemed to have been given as requested unless written denial of consent or disapproval, as the case may be, is given by such Party within such thirty (30) day period, except that no such consent or approval shall be presumed or implied in the case of any material alteration of Common Area or Permissible Building Area on any Party's Tract. Any denial of consent or any disapproval shall specify with particularity the reasons therefor.

#### General

#### Article 35 Notices

##### Paragraph

35.1 Any notice, demand, request, consent, approval or other communication, which any Party hereto is required, or desires, to give or make or communicate to the other, shall be in writing and shall be given, or made or communicated by prepaid United States registered or certified mail (unless otherwise acknowledged in writing by the addressee), addressed, in the case of Developer, to:

Towne West Mall Company  
c/o Melvin Simon & Associates, Inc.  
1712 North Meridian Street  
Indianapolis, Indiana 46202



and addressed, in the case of Penney, 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

with a copy addressed to Penney, as follows:

Until the Opening Date to:

J. C. Penney Properties, Inc.  
c/o J. C. Penney Company, Inc.  
Real Estate Department  
Post Office Box 2405  
Dallas, Texas 75221

After the Opening Date to:

The Penney Department Store Building

and addressed, in the case of Ward, to:

Montgomery Ward Development Corporation  
Attention: Assistant Secretary  
6200 St. John Avenue  
Kansas City, Missouri 64123, and

Montgomery Ward & Co., Incorporated  
Attention: Secretary  
Post Office Box 8339  
Chicago, Illinois 60680

and addressed, in the case of Dillard, to:

Dillard Department Stores, Inc.  
Post Office Box 486  
Little Rock, Arkansas 72203

and addressed, in the case of Wilson, to:

H. J. Wilson Co., Inc.  
Attention: Director of Real Estate  
5825 Florida Boulevard  
Baton Rouge, Louisiana 70806

subject to the right of each Party to designate a different address by notice similarly given.

35.2 Any such notice, demand, request, consent, approval or other communication so made shall be deemed to have been given, made or communicated on the date actually received by the recipient or addressee of such notice, as said date is indicated on the return receipt or indicated in writing by said recipient or addressee.

General

Article 36 Exhibits

Paragraph

36.1 The exhibits to this Operating Agreement have been signed by the duly authorized officers, agents or attorneys of each Party and are hereby incorporated by reference into, and made a part of, this Operating Agreement, as fully as if set forth in full herein.

General

Article 37 Successors

Paragraph

37.1 Except as herein otherwise expressly provided, the covenants, conditions and agreements contained in this Operating Agreement shall bind and inure to the benefit of Developer and each Department Store and their respective heirs, successors, administrators and assigns.

General

Article 38 Joinder by Montgomery Ward

Paragraph

38.1 Montgomery Ward is joining in the execution of this Operating Agreement to evidence its agreement that Montgomery Ward is primarily and jointly and severally liable with Ward Development for the performance and payment of all of the covenants and obligations to be performed and paid by Ward Development under said Operating Agreement and Supplemental Agreement, except that Montgomery Ward shall not incur, assume or guarantee any indebtedness for borrowed money which may be created, incurred or assumed by Ward Development.



IN WITNESS WHEREOF, the Parties hereto have caused this Operating Agreement to be signed and executed as of the day and year first above written, the corporate Party by its duly authorized officers and by affixing its seal.

TOWNE WEST MALL COMPANY,  
An Indiana Limited Partnership

By \_\_\_\_\_  
Herbert Simon, General Partner  
"Developer"

J. C. PENNEY PROPERTIES, INC.,  
A Delaware corporation

ATTEST:

By \_\_\_\_\_  
Vice President

\_\_\_\_\_

"Penney"

MONTGOMERY WARD DEVELOPMENT CORPORATION,  
A Delaware corporation

ATTEST:

Assistant Secretary

By \_\_\_\_\_  
Vice President  
"Ward Development"

MONTGOMERY WARD & CO., INCORPORATED,  
An Illinois corporation

ATTEST:

Assistant Secretary

By \_\_\_\_\_  
Sr. Vice President  
"Montgomery Ward"

CONSTRUCTION DEVELOPERS, INCORPORATED,  
An Arkansas Corporation

ATTEST:

\_\_\_\_\_

"Condev"

DILLARD DEPARTMENT STORES, INC.,  
A Delaware Corporation

ATTEST:

\_\_\_\_\_

By \_\_\_\_\_  
"DDSI"

H. J. WILSON CO., INC.,  
A Louisiana corporation

ATTEST:

\_\_\_\_\_

By \_\_\_\_\_

STATE OF INDIANA            )  
                                  ) SS:  
COUNTY OF MARION            )

Before me, a Notary Public, in and for the above named County and State, on this \_\_\_\_ day of \_\_\_\_\_, 197\_\_, personally appeared Herbert Simon, a General Partner in TOWNE WEST MALL COMPANY, an Indiana limited partnership, to me personally known to be the same person who executed the above and foregoing instrument and duly acknowledged the execution of the same for and on behalf, and as the act and deed of said limited partnership.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my Official Seal, the day and year last above written.

My Commission Expires: \_\_\_\_\_  
Notary Public

STATE OF                    )  
                                  ) SS:  
COUNTY OF                 )

Before me, a Notary Public, in and for the above named County and State, on this \_\_\_\_ day of \_\_\_\_\_, 197\_\_, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of J. C. PENNEY PROPERTIES, INC., a Delaware corporation, to me personally known to be the same person who executed the above and foregoing instrument and duly acknowledged the execution of the same for and on behalf, and as the act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my Official Seal, the day and year last above written.

My Commission Expires: \_\_\_\_\_  
Notary Public



STATE OF )  
COUNTY OF ) SS:  
 )

Before me, a Notary Public, in and for the above named County and State, on this \_\_\_\_ day of \_\_\_\_\_, 197\_\_, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of MONTGOMERY WARD DEVELOPMENT CORPORATION, a Delaware corporation, to me personally known to be the same person who executed the above and foregoing instrument and duly acknowledged the execution of the same for and on behalf, and as the act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my Official Seal, the day and year last above written.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

STATE OF )  
COUNTY OF ) SS:  
 )

Before me, a Notary Public, in and for the above named County and State, on this \_\_\_\_ day of \_\_\_\_\_, 197\_\_, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of MONTGOMERY WARD & CO., INCORPORATED, an Illinois Corporation, to me personally known to be the same person who executed the above and foregoing instrument and duly acknowledged the execution of the same for and on behalf, and as the act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my Official Seal, the day and year last above written.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

STATE OF )  
 ) SS:  
COUNTY OF )

Before me, a Notary Public, in and for the above named County and State, on this \_\_\_\_ day of \_\_\_\_\_, 197\_\_, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of CONSTRUCTION DEVELOPERS, INCORPORATED, an Arkansas corporation, to me personally known to be the same person who executed the above and foregoing instrument and duly acknowledged the execution of the same for and on behalf, and as the act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my Official Seal, the day and year last above written.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

STATE OF )  
 ) SS:  
COUNTY OF )

Before me, a Notary Public, in and for the above named County and State, on this \_\_\_\_ day of \_\_\_\_\_, 197\_\_, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of DILLARD DEPARTMENT STORES, INC., a Delaware corporation, to me personally known to be the same person who executed the above and foregoing instrument and duly acknowledged the execution of the same for and on behalf, and as the act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my Official Seal, the day and year last above written.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_



STATE OF )  
 ) SS:  
COUNTY OF )

Before me, a Notary Public, in and for the above named County and State, on this \_\_\_\_ day of \_\_\_\_\_, 197\_\_, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of H. J. WILSON CO., INC., a Louisiana corporation, to me personally known to be the same person who executed the above and foregoing instrument and duly acknowledged the execution of the same for and on behalf, and as the act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my Official Seal, the day and year last above written.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

GUARANTY

For value received, in consideration of the sum of One Dollar (\$1.00) paid by each of the Department Stores (as said term is defined in the foregoing Construction, Operation and Reciprocal Easement 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 Construction, Operation and Reciprocal Easement Agreement among TOWNE WEST MALL COMPANY ("Developer"), J. C. PENNEY PROPERTIES, INC., MONTGOMERY WARD DEVELOPMENT CORPORATION, MONTGOMERY WARD & CO., INCORPORATED, DILLARD DEPARTMENT STORES, INC., CONSTRUCTION DEVELOPERS, INCORPORATED, and H. J. WILSON CO., INC. (said "Operating Agreement"), 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 observance 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 Operating Agreement.

The undersigned expressly consents and agrees that the Department Stores may, without notice to the undersigned, modify and amend said Operating Agreement with Developer and grant extensions and concessions to Developer in respect thereof without in any manner or to any extent releasing or discharging the liability of the undersigned hereunder, and the undersigned shall be and remain bound and liable hereunder upon said Operating Agreement as the same may be modified, amended or extended from time to time.

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.

As a further inducement to the Department Stores to enter into said 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.

The provision for Limited Liability of Developer contained in Paragraph 34.9 of said Operating Agreement shall not in any way or to any extent limit, reduce, impair, abrogate, negate, discharge or otherwise affect the liability of the undersigned hereunder.



Notwithstanding anything to the contrary contained herein, this Guaranty and the liability of the undersigned hereunder and under the Operating Agreement shall lapse, expire, terminate and become null and void and of no further force and effect upon the occurrence of the "Opening Date" as defined and provided in Paragraph 3.2 of said Operating Agreement.

The undersigned hereby waives notice of acceptance of this Guaranty.

Dated: \_\_\_\_\_, 197\_\_.

MELVIN SIMON & ASSOCIATES, INC.

ATTEST:

By \_\_\_\_\_

Chairman of the Board

\_\_\_\_\_  
Secretary

STATE OF INDIANA            )  
                                  ) SS:  
COUNTY OF MARION         )

Before me, a Notary Public, in and for the above named County and State, on this \_\_\_\_ day of \_\_\_\_\_, 197\_\_, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of MELVIN SIMON & ASSOCIATES, INC., an Indiana corporation, to me personally known to be the same person who executed the above and foregoing instrument and duly acknowledged the execution of the same for and on behalf, and as the act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my Official Seal, the day and year last above written.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

GUARANTY

For value received, in consideration of the sum of One Dollar (\$1.00) paid by MONTGOMERY WARD & CO., INCORPORATED ("Ward"), DILLARD DEPARTMENT STORES, INC. ("Dillard") and H. J. WILSON CO., INC. ("Wilson") (for purposes of this Guaranty, Ward, Dillard and Wilson are collectively referred to as the "Department Stores") and TOWNE WEST MALL 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 Operating Agreement with J. C. PENNEY PROPERTIES, INC. ("Penney Properties"), and for Developer to enter into a certain Supplemental Agreement with Penney Properties as referred to in said Operating Agreement, the undersigned, for itself and its successors in interest and assigns, hereby absolutely and unconditionally guarantees to the Department Stores and Developer, their respective successors and assigns, as their interests appear, the full and faithful payment, performance and observance by Penney Properties of the obligations, covenants, conditions and agreements therein provided, to be paid, performed and observed by Penney Properties under said Operating Agreement and Supplemental Agreement, 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-payment, 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 consents and agrees that the Department Stores and Developer may, without notice to the undersigned, modify and amend said Operating Agreement and said Supplemental Agreement by agreement with Penney Properties and grant extensions and concessions to Penney Properties in respect thereof without in any manner or to any extent releasing or discharging the liability of the undersigned hereunder, and the undersigned shall be and remain bound and liable hereunder upon said Operating Agreement and Supplemental Agreement as the same may be modified, amended or extended from time to time.

The liability of the undersigned hereunder is primary and may be enforced by Developer and/or any one or more of the Department Stores before or after proceeding against Penney Properties.



As a further inducement to the Department Stores and Developer to enter into said 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: \_\_\_\_\_, 197\_\_.

J. C. PENNEY COMPANY, INC.

ATTEST:

By \_\_\_\_\_  
Vice President

\_\_\_\_\_  
Assistant Secretary

STATE OF )

COUNTY OF )

) SS:

Before me, a Notary Public, in and for the above named County and State, on this \_\_\_ day of \_\_\_\_\_, 197\_\_, personally appeared \_\_\_\_\_, the Vice President of J. C. PENNEY COMPANY, INC., to me personally known to be the same person who executed the above and foregoing instrument and duly acknowledged the execution of the same for and on behalf, and as the act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my Official Seal, the day and year last above written.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_