



**DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS**  
**(Shopping Center Property)**

This Declaration of Restrictions and Grant of Easements is made and entered into as of the 31<sup>st</sup> day of March, 1999, by Goodman Road/I-55 Development Company, LLC an Arkansas Limited Liability Company, hereafter referred to as Declarant.

**WHEREAS**, Declarant has previously filed of record a Declaration of Restrictions and Grant of Easements dated June 25, 1998, and filed of record June 29, 1998, in Book 335 at Page 520 in the records of the Chancery Clerk of DeSoto County, Mississippi covering that property more particularly described on Exhibit "A" attached thereto (the "Shopping Center Property." For purposes of this Declaration each separately platted lot located in the Shopping Center Property and any unplatted portion of the Shopping Center Property located therein is a "Lot" and may be collectively referred to as the "Lots") and the outparcels more particularly described in Exhibit "B", attached thereto (the "Outparcels") in order to establish certain easements and impose certain restrictions upon the Outparcels and the Shopping Center Property for the benefit of the Shopping Center Property and the Outparcels; and

**WHEREAS**, Declarant now desires to establish certain additional restrictions solely upon the Shopping Center Property for the benefit of the Shopping Center Property; and

**WHEREAS**, the Site Plan pursuant to which the Shopping Center Property will be generally developed is attached hereto as Exhibit "C", subject to the provisions hereof; and

**NOW, THEREFORE**, Declarant for itself, its successors and assigns does hereby establish restrictions and easements contained herein:

1. **Development**. No building or structure shall be constructed or maintained on the Shopping Center Property unless such building or structure shall conform to the following covenants and requirements:

- a. Any such building including, facade, flag poles, mansards, cupolas, rotundas, etc., shall not exceed thirty-six (36) feet in height, less and except any theater building which may not exceed forty-five (45) feet in height;
- b. Any rooftop equipment located on the top of any building shall be screened;
- c. No rooftop sign shall be erected or maintained with respect to any such building;
- d. In developing and using the Shopping Center Property, the Owners of the Shopping Center Property upon which parking areas are located shall continuously provide and maintain a parking ratio on such portion of the Shopping Center Property equal to not less than the greater of : (i) 5 spaces per 1,000 square feet of gross building area (or if a restaurant, 10 spaces per 1,000 square feet), no more than 25% of which may be for use by compact automobiles; or (ii) that number of parking spaces required by law.

e. At all times after the opening of any retail type store on the Shopping Center Property, the Declarant shall cause the Shopping Center Property to be kept neat, orderly, planted in grass and trimmed until improved and constructed.

f. Any building, structure or improvement on the Shopping Center Property shall be used for retail or commercial purposes only, however, no building, structure or improvement on the Shopping Center Property may be used for:

- (1) Any production, manufacturing, industrial, or storage use of any kind or nature, except for storage of products incidental to the retail sale thereof from the Shopping Center;

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- (2) Undesirable entertainment or recreational facilities. As used herein, "undesirable entertainment or recreational facility" includes, a skating rink, amusement park, carnival, massage parlor, discotheque, dance hall, teen club, night club, bar or tavern or other social encounter club or social encounter restaurant and bar, flea market, head shop, pornographic or "adult" store, billiard parlor or bowling alley;
  - (3) Assembling, manufacturing, industrial, processing, rendering, distilling, refining, smelting, agriculture, or moving operation;
  - (4) Any new or used automobile sales facility;
  - (5) Any "second hand" store, pawn shop, Army, Navy or government "surplus" store;
  - (6) With the exception of Lot 13, not more than a 1,500 square feet area (in the aggregate per tenant leasing space from any Owner (referred to herein as a "Tenant") or per Owner within any separately segregated leased or owned area) for retail store space in any other building or separately segregated area leased or owned by a separate Tenant or Owner within a building located on the Shopping Center Property shall be used for, or be a display area for, the sale, leasing, distribution or display of office supplies, including office furniture; office fixtures; office machines and equipment; computers, computer hardware, computer software, cellular telephones or other telecommunications equipment, art supplies; architectural supplies; engineering supplies; photocopying services; facsimile services; or instant print shop services or otherwise be primarily engaged in the sale, leasing, distribution or display of any of the foregoing items. The foregoing notwithstanding and subject to the execution of a standard form agreement between, and reasonably acceptable to, Office Depot, Inc. (or any successor) and the entities hereafter described in this sentence regarding use restrictions, the restriction set forth in this subparagraph (f) shall not apply to the location of a Best Buy or Circuit City retail facility on the Shopping Center Property; or
  - (7) Any sporting event or other sports facility (which shall not be deemed to include a retail sporting goods store), meeting hall, auditorium or any other place for public meetings.
- g. In addition to the restrictions set forth in subsection (f) above, no building, structure or improvement on the Shopping Center Property located within 300 feet of the southern boundary line of any Outparcel may be used for:
- (1) Any operation of a quick service restaurant deriving more than twenty-five percent (25%) of its gross receipts from the sale of chicken; provided, however, that the foregoing restriction shall terminate in the event Lot 12 ceases to be used as a restaurant selling or serving chicken as a principal menu item for a period of one (1) year;
  - (2) Any operation of a quick-service, sit-down, drive through or delivery restaurant deriving more than twenty percent (20%) of its gross receipts from the sale of Italian food or pizza; provided, however, that the foregoing restriction shall terminate in the event Lot 11 ceases to be used as a restaurant selling or serving Italian food or pizza as a principal menu item for a period of one (1) year; or
  - (3) Any movie theaters or cinemas.
- h. There shall be no unsightly or unscreened garbage or trash receptacle or accumulations of garbage or trash.

- i. Each Owner of a Lot within the Shopping Center Property shall maintain commercial general liability insurance, property damage and all-risk hazard insurance on such Owner's property, buildings, appurtenances and other improvements located thereon. Such insurance shall (i) be carried with a financially responsible insurance company or companies licensed to do business in the state of Mississippi; (ii) have liability limits of at least \$5,000,000.00 for each occurrence, bodily injury and property damage combined; (iii) provide for full replacement value for the buildings and improvements covered thereunder; and (iv) not be subject to change, cancellation or termination without at least thirty (30) days' prior written notice to all other Owners and mortgagees who have given notice of ownership or lending to the insured Owner. Each Owner shall defend, indemnify and hold the other Owners harmless from any and all liability, damage, expense, causes of action, suits, claims, or judgments arising from personal injury, death, or property damage and occurring on or from its own tract, except if caused by the act or negligence of any other Owner, its agents or employees.

Each Owner shall, with respect to the Common Area on its Lot, maintain or cause to be maintained in full force and effect commercial general liability insurance, including personal injury liability insurance and contractual liability insurance with a financially responsible insurance company or companies licensed in the State of Mississippi. Such insurance shall provide for aggregate coverage limits of not less than Five Million and No/100 (\$5,000,000.00) Dollars for public liability and property damage. Additionally, such insurance shall include the following minimum requirements: (i) it shall provide that the policy may not be canceled or materially reduced in amount or coverage without at least 30 days prior written notice by the insurer to the other Owners and mortgagees who have given notice of ownership or lending to the insured Owner; and (ii) it shall include as an additional insured each of the other Owners and mortgagees who have given notice of ownership or lending to the insured Owner.

The insurance described above may be carried by either the Owner or by any tenant of a Lot under: (i) an individual policy; (ii) a blanket policy or policies which includes other liabilities, properties and locations of such Owner or Tenant; (iii) a plan of self-insurance, provided that the Owner or tenant so self-insuring (or the Owner's or tenant's parent entity, if it provides, on behalf of the Owner or tenant, as appropriate, the insurance coverage required hereunder) has and maintains One Hundred Million and No/100 Dollars (\$100,000,000) or more of net worth (calculated in accordance with generally accepted accounting principles consistently applied) as evidenced by a certificate of the chief financial officer of such entity; or (iv) a combination of any of the foregoing insurance programs. Each Owner agrees to furnish to any Owner or mortgagee requesting the same, a certificate(s) of insurance evidencing that the insurance required to be maintained by such Owner (or tenant) is in full force and effect and any Owner (or tenant) electing to self insure shall so advise the other Owners or mortgagees in writing and shall provide with such notice a certificate regarding net worth as required by subsection (iii).

- j. Any building constructed on the Shopping Center Property shall be constructed and operated in such a manner which will preserve the sprinklered insurance rate on the other buildings in the Shopping Center Property.
- k. No portion of the Shopping Center Property may be used for the operation of a gasoline service station or gasoline/convenience business or any other such business which is engaged primarily in the sale or distribution of gasoline. This restriction shall run with the land for the lesser of a period of twenty-five (25) years from the date of filing hereof or so long as gasoline is continually sold from Lot 6 of the Outparcels.
- l. No initial improvements shall be constructed on the Shopping Center Property until the plans for the exterior of same (including site layout and exterior appearance) have been approved in writing by Declarant, whether or not it is then an Owner; provided, however,

that the Declarant must record notice of any assignment of its plan approval rights, which notice must include such assignee's notice address. Each Owner shall deliver to Declarant copies of the exterior design and exterior facade of the initial improvements to be constructed on the Shopping Center Property for approval, which approval shall not be unreasonably withheld, delayed or charged for, so long as such improvements are reasonably consistent with Declarant's overall plan for the appearance and development of the Shopping Center Property and the surrounding property and comply with the requirements of this Declaration. Declarant's failure to approve or disapprove Owner's plans within 30 days after receipt thereof shall be deemed an approval of the same. Non-material modifications not affecting the exterior appearance of the improvement made to (i) the exterior plans for the initial improvements or (ii) any exterior plans for the reconstruction or renovation shall not require Declarant's approval. No approval by the Declarant shall be required in connection with any change in signage otherwise permitted hereunder.

No building or other structure shall be constructed upon any Lot in the Shopping Center Property other than within those areas shown as "Building Area" on the Site Plan ("Building Area"). Notwithstanding the foregoing, canopies and roof overhangs (including supporting columns or pillars), foundations, doors, trash enclosures, and loading and delivery docks, covered areas attached to such docks, required emergency exits (including stairs and landings and footings and foundations associated therewith), and doors for ingress and egress may project from any building or structure up to a distance of fifteen (15) feet over or outside of the front of the Building Area or twenty-five (25) feet over or outside of the rear of Building Area on any Lot (provided that such fifteen (15) or twenty-five (25) feet, as the case may be, does not encroach on any other Lot or set back requirement); provided, any such projection or extension must comply with all applicable laws, rules, ordinances and regulations of every governmental body having jurisdiction over the Shopping Center Property; and provided further, no such extension or projection shall be allowed if it (i) reduces the number of parking spaces or materially alters the parking configuration or vehicular and pedestrian circulation, and/or access in and through the entire Shopping Center Property as shown on the Site Plan, or (ii) interferes with or prevents the location, placement or construction of a building or structure in the Building Area on any Lot. No changes in the use, location or configuration of the driveways, access points, access ways and parking areas (the "Protected Areas") as shown on the Site Plan shall be made without the written approval of the Owners.

- m. No portion of the Shopping Center Property shall be used for: (i) any noxious or illegal purpose, or one which presents a nuisance or danger to the health, safety or welfare of the public; (ii) any dumping, incineration or disposal of garbage; or (iii) any child care center.

## 2. Common Areas.

- a. **Grant of Easements.** "Common Area" shall mean all areas of the Shopping Center Property where buildings or other vertically built improvements are not, from time to time, located. Declarant hereby grants and subjects the Shopping Center Property, and to any future owner of all or any portion of the Shopping Center Property (an "Owner") and to their respective agents, customers, invitees, licensees, tenants and employees, a perpetual nonexclusive easement over, through and around the Common Areas and the respective Lots for roadways, walkways, ingress and egress, and the use of facilities installed for the comfort and convenience of customers, invitees, licensees, tenants and employees of all businesses and occupants of the buildings constructed on the Shopping Center Property. The foregoing nonexclusive easements include easements for vehicular and pedestrian access, ingress, and egress over and across the Shopping Center Property. During the term of this Declaration, each Owner hereby establishes for the use of all Owners and to their respective agents, customers, invitees, licensees, tenants and employees in common with others entitled to use the same, a perpetual non-exclusive easement for the parking of

passenger, service and delivery vehicles over and across those portions of the Common Areas from time to time used as the parking and driveway areas.

Notwithstanding anything to the contrary contained in this Agreement, unless and until: (i) the rear service drive behind the buildings shown on the Site Plan as "Office Depot," "Waccamaw," "PetCo" and "Cato" has been extended easterly to Airways Boulevard, and the access point to Airways Boulevard completed, all as shown on the Site Plan; or (ii) Declarant shall pave the area immediately south of the "Office Depot" building (and shown as Lot 14 on the Site Plan) with asphalt paving of workmanship and materials, and of a size, reasonably sufficient for the purpose of permitting delivery trucks to the "Office Depot" building to turn around and to back into the truck loading area shown for the "Office Depot" building (in which event Declarant shall also maintain and repair such area as a Common Area Maintenance Expense), Owners shall be entitled to utilize the "temporary service drive" shown on the Site Plan (running north to south over the westerly portion of the "Old Navy" building) and connecting the rear service drive to the parking area within Phase I for vehicular and pedestrian ingress and egress and there shall be no obstruction, closure or impairment of traffic through, over or across the area designated as "temporary service drive."

b. **Limitations on Use.**

- (1) **Customers.** Each Owner shall use reasonable efforts to ensure that its customers and invitees shall not be permitted to park on the Common Areas except while shopping or transacting business on the Shopping Center Property.
- (2) **Employees.** Each Owner shall use reasonable efforts to ensure that its employees shall only park on the Common Areas of the Shopping Center Property in the area of the Lot where the employee works.
- (3) **General.** Any activity within the Common Areas other than its primary purpose, which is to provide for parking for the customers, invitees and employees of those businesses conducted with the buildings and for the servicing and supplying of such businesses, shall be permitted so long as such activity shall not unreasonably interfere with such primary purpose. Persons using the Common Areas in accordance with this Agreement shall not be charged any fee for such use. No open display or sales of merchandise shall be permitted in any Common Area without the prior written consent of the Declarant.
- (4) **Intended Use.** Except as specifically otherwise provided herein, the Common Area shall be only used for utility service, vehicular access, circulation and parking, pedestrian traffic and the comfort and convenience of customers, invitees, licensees, agents and employees of the Owners, and business occupants of the buildings constructed in the Building Area on the Lots in the Shopping Center Property and for the servicing and supplying of such businesses. In addition, the Common Area may be used (i) on a temporary basis, in connection with the construction and repair of any buildings or Common Area in the Shopping Center Property so long as such use does not occupy more area than is reasonably required nor unreasonably restrict access to and from or the conduct of business within the buildings in the Shopping Center Property or access to and from the adjacent streets; (ii) in connection with the construction and maintenance of utility lines; and (iii) for any other use required by any governmental authority having jurisdiction thereof.
- (5) **Barriers.** No temporary or permanent fence, berm or other barrier which would (i) prevent or obstruct the passage of pedestrian or vehicular travel for the purposes herein permitted, or (ii) guide traffic away from the Shopping Center

Property or any Lot, or (iii) reduce the visibility of the Shopping Center Property, any Lot or its signage, shall be erected or permitted within or across the ingress and egress easement areas; provided, however, that the foregoing provision shall not prohibit the installation of convenience facilities (such as mailboxes, public telephones, benches, trash deposit enclosures and containers, and transformers), of landscaping, berms or planters, nor of limited curbing and other forms of traffic controls. Except as otherwise expressly provided herein, no hedge, berm, fence, wall or other barrier may be placed, installed or constructed on a Lot if such barrier would block or otherwise interfere with or impede access or visibility intended to be available under this Declaration between that Lot and any other Lot.

- c. **Drainage, Utility and Service Easements.** Declarant grants and subjects the Shopping Center Property to and grants for the benefit of each Lot, perpetual, nonexclusive easements for the installation, operation, flow, passage, use, maintenance, connection, repair, relocation, and removal of underground lines or systems for utilities serving any or all of the other Lots, including but not limited to, sanitary sewers, storm drains, cable TV, water (fire and domestic), gas, electrical, telephone and communication lines, together with the right of ingress and egress for installation, maintenance and repair thereof necessary for the orderly development and operation of the Shopping Center Property and the Outparcels in accordance with the general requirements of the Site Plan and the grading and drainage plan attached hereto as Exhibit "D". No easement shall be deemed granted under any Building Area shown on the Site Plan or under any Building actually constructed.

All construction, alteration, and repair work to any utility described in this Section 2(c) shall be accomplished in an expeditious manner, in compliance with all laws, rules, regulations, orders, permits, approvals and licenses of governmental authorities having jurisdiction. The Owner undertaking such work shall take all reasonably necessary measures to minimize any disruption or inconvenience caused by such work and, except in the case of an emergency, shall give the affected Owners and Tenants written notice a minimum of seventy-two (72) hours prior to commencing such work. Such work shall be accomplished in such a manner as to minimize any damage or adverse effect which might be caused by such work to the Common Area or the Lot on which the work is being done. If such work requires excavation of any portion of any access road, the Owner causing such work to be done shall use all reasonable efforts to cause such excavation to commence and be completed during hours when the business places in the Shopping Center Property are not open for business to the public and, in any event, shall provide suitable alternative ingress and egress immediately adjacent to said access road if it is not practical to keep at least one lane of said access road open during the work. Any excavation of any access roadway within the Shopping Center Property shall be properly backfilled within twenty-four (24) hours, if reasonably practical. The Owner undertaking such work shall repair at its own cost and expense any and all damage caused by such work and, upon completion of such work, shall promptly restore the affected portion of the Common Area or the Lot upon which such work is performed to a condition which is equal to or better than the condition which existed prior to the beginning of such work. In addition, the Owner undertaking such work shall promptly pay all costs and expenses associated therewith and shall defend, indemnify and hold the other Owners harmless from all liens, claims of lien, injuries, damages, losses, or claims, including reasonable attorney's fees actually incurred at trial and appellate levels, attributable to the performance or non-performance of such work. Future Owners shall use their best efforts to cause the installation of such utility and service lines prior to paving of the Common Areas. No Owner shall undertake construction activity in the Common Area of another Owner's Lot or the Protected Area without the prior consent of such Owner.

d. Water Flow and Sanitary Sewer.

- (1) Flow of Water. Declarant hereby reserves, grants, conveys, establishes and declares for the benefit of each Lot, a permanent, non-exclusive easement on, over, upon, across, under and through any portion of each Lot which is not a Building Area and as designated on the Site Plan for the benefit of the other Lots, as reasonably necessary for surface water run-off and for the construction, installation, use, maintenance and repair of any underground drainage system to receive surface water from the benefitted Lot and conduct such water over each Lot as necessary to a discharge area. Unless constructed as a part of the Site Construction Plans, the Owner of the burdened Lot shall determine in its sole, but reasonable, discretion the most effective location for drainage purposes for the placement of any and all components of such drainage system to be located on its Lot (each Declarant hereby agrees to the location for such improvements as shown on the Site Plan or as set forth in the Site Construction Plans), and once any drainage line or lines have been installed on any Lot pursuant to subsection 2(d)(3) below or otherwise, the portion of the applicable Lot encumbered by such easement granted in this paragraph shall be limited to the area within ten (10) feet on either side of the center line of such drainage line.
- (2) Storm Water System. Declarant will construct and the Owners shall thereafter maintain as a Common Area Maintenance Expense (as defined in subparagraph (g) below), each at its sole cost and expense, the improvements necessary to control the storm water runoff from such property and to transport the same under or across the Shopping Center Property to the detention pond to be constructed off-site as a part of the drainage plan depicted on the Site Plan.
- (3) Sanitary Sewer. Declarant will construct and the Owners shall thereafter maintain as a Common Area Maintenance Expense (as defined in subparagraph (g) below), each at its sole cost and expense, that portion of the sanitary sewer system serving the Shopping Center Property. Once any portion of said sanitary sewer line has been dedicated to and the responsibility for the maintenance thereof accepted by the appropriate government authority, then the maintenance responsibility set forth herein with respect to such portion shall automatically terminate.

e. Signage.

- (1) General. Each Owner shall have the right to maintain such signs on the interior of buildings located on its Lot as it desires, whether or not such signs are visible from the exterior. As permitted by applicable governmental regulations, each Owner shall have the right to erect, maintain and replace signs on the exterior of the buildings ("Building Signage") located on its Lot; provided, such Building Signage shall be approved in advance by the Declarant (which consent shall not be unreasonably withheld) and shall be constructed so as to lie flat against such exterior fascia facing outward and shall not protrude more than two (2) feet from the surface thereof, and provided further, in no event shall Building Signage be located on the roofs (excluding canopies so long as no sign is erected on a canopy which sign will extend above the height of the building roof including the height of any mock mansard roof) of any buildings in the Shopping Center Property.
- (2) Pylon Signage. Exhibit "E" represents a depiction of the proposed pylon sign (the "Pylon Sign") which is to be located on the sign easement area on Outparcel Lot 9. The rights granted by the Declarant to place signs on the sign panels on the Pylon Sign shall be allocable as shown on Exhibit "E" and each Owner shall have an easement running with the land across such portion of the Common Area as

may be appropriate to maintain the signage panels. All operation and maintenance expenses associated with the Pylon Sign (other than the actual sign panel which shall be borne by each respective Owner) shall be borne by the Owners proportionately based upon the relative size of each Owner's panel. No Lot Owner shall be permitted to have a single user Pylon Sign on the Lot, less and except any theater located on the Shopping Center Property.

- f. **Lighting.** After Declarant's completion of the Common Area lighting system, each Owner shall keep its Lot fully illuminated each day it is open for business (as such hours or days of operation may change from time to time) from dusk to at least thirty (30) minutes after the last business operation on its Lot has closed, and keep any interior building security lights on from dusk until dawn. Prior to the completion of the Common Area lighting system, Declarant shall be responsible for maintaining and replacing the Common Area lighting. All Common Area lighting on the Shopping Center Property shall be illuminated until at least thirty (30) minutes after the last business operation and the cost of such lighting shall be a Common Area Maintenance Expense under subparagraph (g)(2) below.
- g. **Maintenance.**
- (1) **Standards.** Following completion of the improvements on the Common Areas, the Owners (except as described in subparagraph 2g.(3) below) shall maintain, repair and replace any portion of the Common Areas they own in good condition and repair. The maintenance is to include, without limitation, the following:
- (a) Maintaining the surfaces in a level, smooth and evenly-covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use, and durability;
  - (b) Removing all papers, ice and snow, mud and sand, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;
  - (c) Placing, keeping in repair and replacing any necessary appropriate directional signs, markers and lines;
  - (d) Operating, keeping in repair and replacing, where necessary, such lighting facilities described in subparagraph 2(f) as shall be reasonably required;
  - (e) Maintaining all perimeter and exterior building walls including but not limited to all retaining walls in a good condition and state of repair;
  - (f) Operating, keeping in repair and replacing, where necessary, the signage described in subparagraph 2(e) above; and
  - (g) Maintaining, mowing, weeding, trimming and watering all landscaped areas and making such replacements of shrubs and other landscaping as is necessary.
  - (h) Common utilities, lines and systems.
- (2) **Expenses.** The respective Owners shall pay their pro rata share of the Common Area maintenance expense (the "Common Area Maintenance Expense") of the Shopping Center Property calculated using a fraction, the numerator of which shall be the gross leasable area of such owner's building improvements located on the Shopping Center Property and the denominator of which shall be the total

gross leasable area of all building improvements located on the Shopping Center Property, plus such Owner's portion of the expenses in connection with the operation and maintenance of the Pylon Sign under subparagraph 2(c) above. Prior to the completion of all buildings on the Shopping Center Property, the denominator shall be based upon the sum of the gross leasable area of the buildings (i) constructed on the Shopping Center Property and with respect to which a certificate of occupancy has been previously issued and (ii) those then under construction. "Gross leasable area" shall mean the number of square feet of within such Owner's improvements measured to the centerline of the exterior walls of such building area, including entrance areas, loading areas as determined in accordance with the Building Owner's and Managers International (BOMA) standard method of measuring retail space. The gross leasable area of any building then under construction shall be calculated based upon the buildings plans being used for the construction thereof.

Notwithstanding anything contrary contained in this Agreement: (i) Common Area Maintenance Expenses for Lot 13 (which includes the entire building titled "Office Depot" on the Site Plan) shall not include any items which are, or are in the nature of, capital improvements (however, the Owner of Lot 13 agrees to pay its proportionate share of the cost of repaving portions of the Common Area not more than one (1) time every seven (7) years); and (ii) until not less than 75,000 square feet of gross leasable area within all buildings within the Shopping Center shall have received certificates of occupancy and the Owners thereof are paying their proportionate share of Common Area Maintenance Expenses, the Common Area Maintenance Expense for Lot 13 shall not exceed \$1.25 per square foot per annum.

- (3) **By Agent.** Subject to the mutual agreement of the parties hereto, either the Declarant or a third party designated by the Declarant shall be appointed as an agent of the parties to maintain the Common Areas in the manner as above outlined and bill for and collect the sums due from the Owners hereunder. Said third party may receive for such agency a fee that is mutually acceptable to all parties to cover supervision, management, accounting and similar fees, which sums are to be included in the general maintenance expense paid by the respective Owners and shall not exceed ten percent (10%) of the out-of-pocket maintenance expenses for such period (calculated exclusive of the administrative fee to be paid to such agent). Unless a third party is agreed, Declarant shall perform the maintenance of the Common Areas.
- (4) **Utilities.** Each Owner of a Lot shall repair and maintain in good condition all utility facilities, lines, and systems located on its Lot that serve only its Lot unless the same are dedicated to and accepted by a public or quasi-public utility or authority and a Lot Owner's failure to maintain and repair or cause to be maintained and repaired such facilities shall give the other Owners who are affected thereby the right (unless such utility facilities are dedicated to and/or otherwise being maintained by a public or quasi-public utility or authority), after giving reasonable prior written notice to the Owner who fails to make repairs (or in the case of an emergency, without any prior notice), to make such repairs and charge the Owner upon whose Lot the repairs are made.

The Owner of each Lot shall maintain and repair, at its sole cost, any facilities installed pursuant to the utility easements which have been established pursuant to subparagraph 2(c) which exclusively serve such Owner's Lot, unless the same are granted or dedicated to and accepted by a utility or a governmental agency acceptable to the Owner which agrees to maintain and replace the same. Any Owner's maintenance and repair of non-dedicated utilities located on its Lot shall

be performed in a lien-free manner following not less than seventy-two (72) hours' written notice to any other Owner affected thereby (except in an emergency, the work may be immediately initiated, provided notice is given as soon as reasonably possible) and shall be done after normal business hours whenever reasonably possible without materially increasing the cost or expense and shall otherwise be performed in such a manner as to cause as little disturbance in the use of the Lots of the other Owners as is practicable under the circumstances.

All utility facilities, lines and systems which serve more than one Lot shall be maintained, repaired and replaced as part of the Common Area pursuant to subparagraph 2(g)(1)(g) above.

- (5) **Building Improvements.** After completion of construction, each Owner shall maintain and keep the building improvements located on its Lot in good working condition and state of repair (subject to normal wear and tear), in compliance with all governmental laws, rules, regulations, orders, and ordinances exercising jurisdiction there over (subject to the right of an Owner to contest laws, so long as such contest does not materially impair the easement rights or any other rights granted to any other Owner herein), and in compliance with the provisions of this Declaration. Each Owner shall store all trash and garbage in adequate containers, to locate such containers so that they are not readily visible from the parking area, and to arrange for regular removal of such trash or garbage, unless such service is provided as a part of Common Area maintenance.

In the event any of the building improvements are damaged by fire or other casualty (whether insured or not), the Owner upon whose Lot such building improvements are located shall promptly remove the debris resulting from such event and provide a sightly barrier and shall either: (i) commence to and diligently complete repair or restore the building improvements so damaged, or (ii) commence to and diligently complete erection of other building improvements in such location, provided all provisions of this Declaration are complied with; or (iii) demolish the damaged portion or all of such building improvements and have restored the area to an attractive condition in which event the area shall be Common Area until a replacement building is erected (but no Building Area shall be subject to the utility easements provided in this Declaration).

- (6) **Designation of Tenant.** Any Owner of a portion of the Shopping Center Property ("Designating Owner") may (with the consent of the "Designated Tenant" hereafter described), by notice to the other Owners, designate a Tenant (hereafter, the "Designated Tenant") of a Lot as the party responsible for performing the obligations of such Owner under this Declaration. Thereafter, such Designated Tenant shall have the benefit of, and the right to enforce, all of the rights of the Designating Owner under this Agreement, and shall perform all of the obligations of, and be subject to the restrictions upon, the Designating Owner under this Declaration.

A Tenant may not be designated as a Designated Tenant pursuant to this subparagraph 2(g)(6) hereof unless such Tenant is leasing all of a Lot and the improvements located thereon from the Designating Owner.

- h. **Taxes and Assessments.** Each Owner shall pay, or cause to be paid prior to delinquency, all taxes and assessments with respect to its Lot, including, without limitation, the buildings and improvements located thereon and any personal property owned or leased by such Owner in the Shopping Center Property, provided that if the taxes or assessments or any part thereof may be paid in installments, the Owner may pay each such installment as and when the same becomes due and payable. Nothing contained in this subsection shall

prevent any Owner from contesting at its own cost and expense any such taxes and assessments with respect to its Lot in any manner such Owner elects, so long as such contest is maintained with reasonable diligence and in good faith. The easements granted in this Declaration shall survive the imposition of any tax lien on the individual Lots and the Shopping Center Property. In order to evidence compliance with the foregoing, any Owner ("Requesting Owner") may, from time to time, not more than twice in any calendar year, request in writing that another Owner ("Taxpayer") furnish written evidence that all real property taxes and installments of assessments and special assessments upon the Taxpayer's Lot then due have been paid in full. Upon such request, the Taxpayer shall furnish such evidence to the Requesting Owner.

If an Owner ("Defaulting Tax Owner") shall fail to pay any real property taxes or installments of assessments or special assessments ("Taxes") on its Lot before any penalties and statutory interest accrue, any other Owner ("Non-Defaulting Tax Owner") may pay the Taxes, penalties and statutory interest if such amounts are not paid by the Defaulting Tax Owner within thirty (30) days after written notice from the Non-Defaulting Tax Owner to the Defaulting Tax Owner demanding the payment of such amounts. In such event, the Defaulting Tax Owner shall reimburse the Non-Defaulting Tax Owner upon written demand for all Taxes, penalties, and statutory interest paid by the Non-Defaulting Tax Owner for the property in the Shopping Center Property owned by the Defaulting Tax Owner, plus interest at the Default Rate. Upon payment of the Taxes by the Non-Defaulting Tax Owner, such Owner shall have a lien on the Defaulting Tax Owner's Lot which shall have priority based on the date of the recording of a notice thereof in the recording office, until such time as the Defaulting Tax Owner pays in full to the Non-Defaulting Tax Owner the amounts provided for above.

- i. **Tax Increment Financing.** Each Owner, without cost to such Owner, agrees to reasonably cooperate with Declarant in order to obtain the issuance by the appropriate authority, or authorities of such documentation as is necessary (i.e., an inducement resolution) to make available the ability to obtain "Tax Incremental Financing" ("TIF Financing") for the purpose of bringing utilities to the Shopping Center Property, constructing roadways, drainage improvements, site improvements and such other improvements as may be permitted under the statutes of the State of Mississippi, all of which will benefit the Shopping Center Property, the Lots and adjoining property which may be owned by the Declarant or others. If TIF Financing is ultimately utilized, ad valorem taxes for both the Shopping Center Property, the Lots and the adjoining property benefitting from such improvements shall be utilized to service the TIF Financing. As available in the State of Mississippi, TIF Financing is a financing means available to developers allowing for the utilization of anticipated increases in ad valorem taxes to finance certain improvements and is not a special assessment imposed against a Lot or improvements thereon. By virtue of this Declaration, no Owner is consenting to any special tax district or assessment by which such Owner's Lot or the Shopping Center Property may be assessed or taxed in an amount greater than would have occurred otherwise. Each Owner shall have no obligations under the TIF Financing other than to pay its appropriate tax obligations upon final assessment of the Lot and improvements thereon and pro rata share of the tax obligations attributable to the Common Areas located on its Lot; and, thereafter, not to contest future ad valorem taxes on such Lot and improvements during the term of the TIF Financing claiming that taxes should be established based on an assessed value below the initial assessment established for purposes of the TIF Financing. In subsequent years during the term of the TIF Financing, each Owner may contest and claim taxes should be reduced down to, but not below, the initial assessment. Each Owner may contest the initial assessment to any level during the initial assessment process for such Owner's Lot and improvements.

3. Construction.a. General Requirements.

- (1) All construction activities performed by an Owner within the Shopping Center Property shall be performed in compliance with this Declaration and all laws, rules, regulations, orders, ordinances and permits of or issued by the city, county, state, and federal governments, or any department or agency thereof, affecting improvements constructed within the Shopping Center Property, subject to Owner's or Tenant's right to contest laws, rules, regulations, orders and ordinances which do not materially interfere with the rights of any other Owner or Tenant.
- (2) No construction or other activities of an Owner shall:
  - (i) unreasonably interfere with the use, occupancy or enjoyment of any part of the remainder of the Shopping Center Property by any other Owner or its permittees; or
  - (ii) cause any other Owner to be in violation of any law, rule, regulation, order or ordinance applicable to its Lot of the city, county, state, federal government, or any department or agency thereof.
- (3) Each Owner shall defend, indemnify and hold harmless the other Owners and Tenants from all claims, actions, demands, causes of action, losses and proceedings and costs incurred in connection therewith (include reasonable attorneys' fees actually incurred and costs of suit at trial and appellate levels) resulting from any accident, act, omission, cost, expense, injury or loss or damage whatsoever occurring to any individual or entity or to the property of any individual or entity arising out of or resulting from the performance of any construction activities performed or authorized by such indemnifying Owner or by, through or under such Owner.

b. Common Area.

- (1) Each Owner shall cause the Common Area on its Lot to be improved in a good and workmanlike manner in accordance with the Site Plan and in accordance with good engineering standards, or maintained at an "at grade" level, paved or landscaped and free of debris.
- (2) Following completion of the infrastructure work, no Owner may make any changes in the use, location or configuration of the driveways, access points, access ways and drives or parking areas of the Common Area of any Lot (including, without limitation, striping, curbing, landscaping, directional signage, access, ingress or egress (or erecting any buildings, structures or improvements), other than as shown in the Site Plan, without the prior written consent of the Owners of all Lots and the Designated Tenants thereof.

c. Building Improvements.

- (1) If a portion of any Building Area is at one point in time paved or landscaped and used as Common Area, such portion may be subsequently used as Building Area provided that all parking requirements and other provisions of this Declaration for such Lot are also complied with. Likewise, if an area is at one point in time occupied by a building, such building may be subsequently razed, and until replaced, the area shall thereafter be paved or landscaped or grassed and seeded

and maintained as though it were a part of the Common Area, but at the sole expense of the Owner thereof; provided, that consent from the Owners must be obtained to alter a Protected Area.

- (2) No Owner shall build or otherwise erect any buildings or other structures, or otherwise alter the plan for development as shown on the Site Plan except within those areas, if any, illustrated as Building Areas on the Site Plan; provided, that consent from the Owners must be obtained to alter a Protected Area.

- d. **Common or Party Walls.** If any exterior wall is constructed by an Owner (the "Existing Owner") on the property line of any Lot immediately adjacent to a portion of the Building Area depicted on the Site Plan on the adjoining Lot, then such adjoining Owner shall have the right and each Adjoining Owner grants the other Owner and easement to abut its exterior wall against such Existing Owner's wall and construct such exterior facade, expansion joints and other improvements as may be required to give the appearance of adjoining buildings; provided, however, this provision shall not be deemed or construed as any right or obligation of the Owners to treat or use the Existing Owner's wall as a common wall with respect to the Owner's construction of its buildings and improvements thereon. The foregoing notwithstanding the rights of the adjoining Owner shall be subject to the Owner, at its sole cost and expense, delivering to the Existing Owner such plans and specifications and engineering reports and certifications as the Existing Owner may reasonably require evidencing that the construction and location of the roof and other exterior walls of the adjoining Owner's buildings and improvements abutting the Existing Owner's wall will not adversely impact the useful life, appearance or structural integrity or fire safety of said wall or the Existing Owner's building or improvements. Furthermore, the Adjoining Owner's construction of the adjoining wall shall be done in a manner that does not materially interfere with the use or enjoyment of the Existing Owner's Building

4. **Default.**

- a. If any Owner fails to comply with any provision herein ("Defaulting Owner"), then any other Owner ("Non-Defaulting Owner") may, upon thirty (30) days prior written notice to the Defaulting Owner (with a copy to such Owner's mortgagee if known to such Non-Defaulting Owner), proceed to cure the default (and shall have a license to do so) by the payment of money or performance of some other action for the account of the Defaulting Owner. The foregoing right to cure shall not be exercised if, within the thirty (30) day notice period: (i) the Defaulting Owner or its mortgagee cures the default, or (ii) if the default is curable by other than payment of money, but cannot reasonably be cured within that time period, the Defaulting Owner or its mortgagee begins to cure such default within such time period and diligently pursues such action to completion. In the event of such an emergency, the Non-Defaulting Owner shall give whatever notice to the Defaulting Owner as is reasonable under the circumstances.
- b. Within thirty (30) days of written demand (including providing copies of invoices reflecting costs) the Defaulting Owner shall reimburse the Non-Defaulting Owner for any sums reasonably expended by the Non-Defaulting Owner to cure the default, together with interest thereon at the "Default Rate" set forth below.
- c. The Default Rate shall be the lesser of: (i) five percent (5%) per annum in excess of the "Prime Rate" from time to time publicly announced by the Wall Street Journal, or (ii) the highest rate permitted by law.

5. **Liens.** In the event any construction or mechanic's lien is filed against the Lot of one Owner as a result of services performed or materials furnished in connection with the construction activities on any other Lot, the Owner of the Lot upon which services were performed or materials furnished giving rise to the lien agrees that, within

fifteen (15) days of the date such Owner becomes aware of such lien or receives written notice of same, whichever is earlier, it will cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien or by posting bond or other security as shall be required by law to obtain such release and discharge.

6. **Temporary Construction Easement.** The Owners acknowledge that during the construction of the building on any Lot and the construction of the parking and Common Areas, access, parking and automobile and pedestrian circulation may be temporarily impeded, interrupted or blocked because of construction activities. The Owner of such Lot under construction agrees to minimize the disruption to the extent consistent with safety, sound construction procedures and applicable governmental requirements and in furtherance thereof, to (i) proceed diligently to prosecute all construction to completion, (ii) following initial construction on the Shopping Center Property to keep open at all times a two-way access to Goodman Road and Southcrest Parkway, and (iii) keep all construction materials and equipment within their particular Lot. No building, barricade or permanent structure may be placed, erected or constructed within the Common Area on any easement, or on any street or gutter of any Lot except loading and delivery docks and covered areas attached to such docks, trash enclosures, directional signs, bumper guards or curbs, shopping cart corrals, paving, landscaping and landscape planters, lighting standards, driveways, sidewalks, walkways, parking stalls, roof overhangs, and columns or pillars supporting roof overhangs, and any other improvements as may be required under applicable laws, rules, ordinances and regulations of any governmental body having jurisdiction over the Shopping Center Property. In connection with any construction, reconstruction, repair or maintenance on a Lot, an Owner or any Tenant shall have the right to create a temporary staging and/or storage area in the Common Area on its Lot so long as reasonable access is available over the Lot for ingress and egress to the Shopping Center Property.

All construction, alteration and repair work to any Common Area improvement described in this Section 6 shall be accomplished in an expeditious manner (subject to matters of force majeure), in compliance with all laws, rules, regulations, orders, permits, approvals and licenses of governmental authorities having jurisdiction and otherwise as provided elsewhere herein. Nothing herein shall prevent any Owner or Tenant from contesting in good faith the application of any laws, rules and regulations to its Lot, provided (a) such contest is conducted in accordance with applicable law, (b) such proceedings are actively and diligently pursued to their conclusion, (c) such contest does not materially impair the easement rights or any other rights of any other Owner or Tenant granted herein, and (d) such contest does not result in the placement of any lien on the title to such Owner's Lot. The Owner undertaking such construction, alteration and repair work shall take all reasonably necessary measures to minimize any disruption or inconvenience caused by such work to the Owner or any Permittee of the other Lot and, except in case of emergency, shall give the affected Owner and Tenant prior written notice a minimum of seventy-two (72) hours prior to commencing such work. Each Owner shall, in effecting construction, alteration or repair work upon its Lot, use reasonable efforts to avoid unreasonably interfering with the conduct of activities on any other Lot. All construction, alteration and repair work shall be accomplished in such manner as to minimize any damage or adverse effect to any other Lot which might be caused by such work.

Any construction, installation, repair, use or maintenance performed on any Lot shall be performed in a good and workmanlike manner, in accordance with any applicable approved plans and specifications, and in accordance with all applicable governmental requirements, rules, regulations, statutes and ordinances. Once commenced, such work shall be diligently pursued to completion and shall be completed within a reasonable time, subject to delays caused by matters beyond the reasonable control of the parties performing such work. Any repairs or maintenance shall be performed with materials equal in quality to the original. Upon completion of such work, the area affected by such work shall promptly be restored, as nearly as possible, to its condition prior to such work.

7. **Nature of Declaration and Restrictions.** The foregoing easements, restrictions and agreements are imposed on the Shopping Center Property for the mutual benefit of the owners of the Shopping Center Property and their respective successors and assigns. The agreements, easements, restrictions and covenants herein made shall be deemed covenants running with the land and shall be binding upon, and shall inure the benefit of, the Shopping Center Property and any person who may from time to time own, lease or otherwise have an interest in the Shopping Center Property. In the event any Lot is hereafter divided into two (2) or more Lots by separation of ownership, lease, or otherwise, then any resulting Lots shall enjoy and be subject to the benefits and burdens of the easements and all other terms and conditions of this Declaration. For purposes of the easements granted in this Paragraph, the Lot benefitted by each easement constitutes the dominant estate and the Lot encumbered by each easement constitutes the servient estate. Each easement granted in this Article is appurtenant to and for the benefit of the Lot owned by the grantee of the easement and shall run with title to each Lot. No easement may be transferred, assigned or encumbered except as

an appurtenance to the benefitted Lot. Upon an Owner's conveyance of its entire interest in a Lot, such Owner shall be relieved of all further obligations, duties and liabilities under this Declaration.

8. **Governing Law.** This Declaration is made in and shall be construed pursuant to the laws of the state of Mississippi.

9. **Term.** Unless otherwise canceled or terminated, all of the easements granted in this Agreement shall continue in perpetuity. All other right, restrictions and obligations as they relate to the use of the Property hereof shall automatically terminate and be of no further force and effect after ninety-nine (99) years from the date hereof; provided, however, any obligations for maintenance or repairs or an obligation to indemnify another party hereunder shall survive for the applicable statute of limitation with respect to bringing a claim for payment thereof.

10. **Estoppel Certificates.** Upon reasonable request, each Owner shall promptly furnish to requesting party (including tenants) an estoppel certificate in a form reasonably acceptable to such requesting party to the effect that this Declaration is in full force and effect and that the Owner is not in default hereunder.

11. **Notices.** Every notice, approval, consent, or other communication authorized or required by this Declaration shall not be effective unless same shall be in writing and delivered in person, by courier, by reputable overnight courier guaranteeing next day delivery, or sent postage prepaid by United States registered or certified mail, return receipt requested, directed to the Declarant at 2200 N. Rodney Parham, Suite 210, Little Rock, Arkansas 72212, and to each Owner at the address given in writing to the Declarant at the time such Owner acquires title to a Lot, or such other address as Declarant or Owner may designate by record notice. Such notices or other communications shall be effective (i) in the case of personal delivery or courier delivery, on the date of delivery to the Declarant as evidenced by a written receipt signed on behalf of such party, (ii) if by overnight courier, one (1) day after the deposit thereof with all delivery charges prepaid, and (iii) in the case of registered or certified mail, the earlier of the date receipt is acknowledged on the return receipt for such notice of five (5) business days after the date of posting by the United States Post Office.

12. **Effect of Declaration on Outparcels.** Except as otherwise specifically set forth herein, nothing contained in this Declaration shall be deemed or construed to create any obligation affecting the Shopping Center Property with respect to the Outparcels or create any right in favor of an owner of an Outparcel other than as specifically set forth in the Declaration of Restrictions and Grant of Easements dated June 25, 1998, and filed of record June 29, 1998, in Book 335 at Page 520 in the records of the Chancery Clerk of DeSoto County, Mississippi (the "Outparcel DRGE"). No amendment, termination or other modification of this Declaration shall require any prior notice to or approval of the owner of any Outparcel. [To the extent that any provision of this Declaration is in conflict with or contradicts the terms of the Outparcel DRGE, the terms and conditions of this Declaration shall be controlling for purposes of the rights, restrictions and obligations of the Owners and tenants of the Shopping Center Property solely as they relate to the Owners and Tenants of the Shopping Center Property, but not as they relate to any obligation owed to or owed by the owners of the Outparcel Lots.

13. **Damage or Destruction.** In the event any building in the Shopping Center Property is damaged or destroyed by fire or other casualty or any other cause whatsoever, the Owner of the Lot upon which such building is located may, in its discretion, tear down or rebuild the damaged building. However, if an Owner determines to tear down a damaged building, that Owner shall either promptly rebuild a new building on the same location or leave and maintain the Lot of land on which the building was located in a smooth, level condition, free and clear of all refuse and weeds and continuously sealed against dust by compaction, paving, lawn or other ground cover. In the event the Common Area of the Shopping Center Property or any portion thereof shall be damaged or destroyed by fire or other casualty or any other cause whatsoever, the Owner of the Common Area so damaged or destroyed shall forthwith proceed with due diligence to restore such Common Area to a condition to permit vehicular parking (in the manner required by this Declaration) and free and safe vehicular and pedestrian access and circulation in the Shopping Center Property and to and from all streets adjacent thereto.

14. **Eminent Domain.**

a. **Owner's Right to Award.** Nothing herein shall be construed to give any Owner any interest in any award or payment made to any other Owner in connection with any exercise

of eminent domain or transfer in lieu thereof affecting any other Owner's Lot or giving the public or any government any rights in the Lots. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of the Common Area located within the Shopping Center Property, the award attributable to the land and improvements of such portion of the Common Area shall be payable only to the Owner in fee thereof and no claim thereon shall be made by the Owners of any other portion of the Common Area.

- b. **Collateral Claims.** All other Owners or persons having an interest in the Common Area so condemned may file collateral claims with the condemning authority for their losses which are separate and apart from the value of the land area and improvements taken.
- c. **Tenant's Claim.** Nothing in this Paragraph shall prevent a tenant from making a claim against an Owner pursuant to the provisions of any lease between tenant and Owner for all or a portion of any such award or payment. Provided, however, the terms of any agreement between the Owner and any lessee shall govern the rights of those parties under condemnation.
- d. **Restoration of Common Area.** The Owner of the fee of each portion of the Common Area so condemned shall promptly repair and restore the remaining portion of the Common Area so owned as near as practicable to the condition of the Common Area immediately prior to such condemnation or transfer to the extent that the proceeds of such award are sufficient to pay the cost of such restoration and repair and without contribution from any other party hereto.
- e. **Restoration of Building Area.** In the event any building or a portion thereof located in the Shopping Center Property is condemned, the remaining portion of the building shall be demolished or restored by the Owner of the Lot on which it is located and such Owner shall remove all debris resulting therefrom. Such election shall be made within one hundred eighty (180) days from the date of taking. In the event the remaining building improvements are removed, thereafter the Owner shall maintain such building area Lot in the manner provided for in Paragraph 13 above.

15. **Default.**

- a. **Right to Cure.** Should any Owner fail to timely perform any of its obligations hereunder and thereafter fail to perform or, if such performance cannot be reasonably completed within thirty (30) days, to commence the performance of and continue to diligently pursue, such obligation within thirty (30) days of its receipt of any other Owner's written demand therefor, the Owner giving such notice shall, in addition to any other remedy provided at law or in this Declaration, have the right (but not the obligation) to perform such obligation on behalf of the defaulting Owner and the defaulting Owner shall reimburse the curing Owner for the cost of performing such work within ten (10) days after receipt of billing therefor and proof of payment thereof. In the event the defaulting Owner does not reimburse the curing Owner within such ten (10) days, the curing Owner shall have (i) the right to exercise any and all rights which such curing Owner might have at law to collect the same, and (ii) have a lien on the property owned by the defaulting Owner to the extent of the amount paid by the curing Owner but not reimbursed by the defaulting Owner, which amount shall bear interest at a rate equal to the then published Federal Discount Rate plus four percent (4%) per annum, or the highest legal rate of interest, whichever is less, from the date of billing until paid. Such lien may be filed for record by the curing Owner as a claim against the defaulting Owner, in the form required by law, in the office wherein mortgages are recorded, which lien shall contain at least the following information:

- (i) The name of the lien claimant;
- (ii) The name of the defaulting Owner;

- (iii) A description of the work performed on behalf of such Owner and a statement itemizing the cost thereof; and
- (iv) A description of the property being liened.

The lien so claimed shall attach from the date of recordation in the amount claimed by the Owner curing the default and it may be enforced and foreclosed in any manner allowed by law. Such lien, when so established against the real property described in such lien, shall be prior and superior to any right, title, interest, lien or claim which may be or is acquired or attached to such real property after the time of recording the claim of lien.

- b. **Injunctive Relief.** In the event of any violation or threatened violation of any provision of this Declaration, any Owner shall have the right, in addition to any other remedies herein or by law provided, to enjoin such violation or threatened violation. Notwithstanding the foregoing, tenants in the Shopping Center Property shall not have the right of injunction but shall rather be limited to their rights granted by law and by their respective leases.
- c. **Breach Shall Not Permit Termination.** No breach of this Declaration shall entitle any Owner to cancel, rescind or otherwise terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Declaration.
- d. **No Limitation of Remedies.** The various rights and remedies herein contained and reserved to the Owners, except as otherwise provided in this Declaration, shall not be considered as exclusive of any other right or remedy, but shall be construed as cumulative and shall be in addition to every other remedy now or hereafter existing at law, in equity or by statute. No delay or omission of the right to exercise any power or remedy shall impair any such right, power or remedy or be construed as a waiver of any default or nonperformance or as acquiescence therein.

16. **No Partnership.** None of the terms or provisions of this Declaration shall be deemed to create a partnership between or among the Owners in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. Each Owner shall be considered a separate owner, and no Owner shall have the right to act as an agent for another Owner, unless expressly authorized to do so herein or by separate written instrument signed by the Owner to be charged.

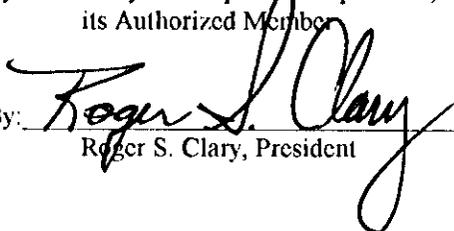
17. **Amendment, Waiver.** Any of the foregoing restrictions may be waived, amended, modified, released or terminated at any time and from time to time only by a written amendment to this Declaration signed by Declarant, if it is an Owner, together with all other Owners.

IN WITNESS WHEREOF, the undersigned has executed this Declaration as of the day and year above set forth.

**DECLARANT:**  
Goodman Road/I-55 Development Company, LLC

By: South Lake Centre, LLC, as Administrator

By: Clary Development Corporation,  
its Authorized Member

By:   
Roger S. Clary, President

Attest or Witness:



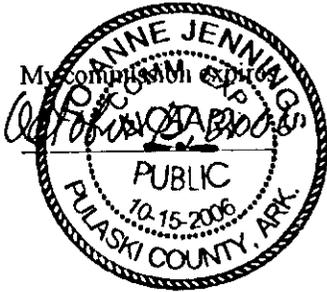
ACKNOWLEDGMENT

STATE OF Arkansas )  
 ) ss.  
COUNTY OF Pulaski )

Be it remembered that on this 31st day of March, 1999, before me a notary public in and for the county and state aforesaid, came Roger S. Clary, who acknowledged himself to be President of Clary Development Corporation, the Authorized Member of South Lake Centre, LLC, which is the Administrator of Goodman Road/1-55 Development Company, LLC, and that he, as such officer, being authorized so to do, executed the foregoing instrument in the name of and on behalf of said limited liability company for the purposes therein contained.

In testimony whereof, I have IN WITNESS WHEREOF, I hereto set my hand and affixed my notary seal the day and year last above written.

Joanne Jennings  
Notary Public



MORTGAGEE'S JOINDER, ACKNOWLEDGMENT AND CONSENT

FOR VALUE RECEIVED, this 1st day of April, 1999, the undersigned, SouthTrust Bank, National Association ("Beneficiary"), as the holder of the Deed of Trust & Security Agreement dated March 24, 1998 and filed of record in Real Estate Trust Deed Book 984, Page 323 in the records of DeSoto County, Mississippi (the "Deed of Trust"), that include a portion of the property subject to this Declaration does hereby acknowledge and consent to the within and foregoing Declaration and does hereby agree that any foreclosure, deed in lieu of foreclosure, or any sale under any of the Deed of Trust shall be made subject to the terms of the Declaration.

IN WITNESS WHEREOF, the undersigned has executed this Joinder, Acknowledgment and Consent to the Second Declaration under seal, as of the date first above written.

BENEFICIARY:

SouthTrust Bank, National Association.

By: [Signature]  
Title: Senior Vice President

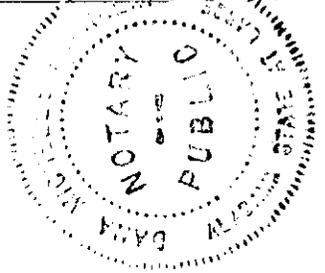
ACKNOWLEDGMENT

STATE OF Alabama )  
 ) ss.  
COUNTY OF Jefferson )

On this 1st day of April, 1999, before me, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named Troy A. Gambriel, to me personally well known, who stated that he/she was the Senior Vice President for the Beneficiary, SouthTrust Bank, National Association and was duly authorized in his capacity to execute the foregoing instrument for and in the name and behalf of said beneficiary, and further stated and acknowledged that he/she has so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal.

Dana Michelle Franklin  
NOTARY PUBLIC



My commission expires:  
**My Commission Expires**  
**March 7, 2001**

Description of a 34.2325 acre partition of the remaining Goodman Road Associates, LTD property as recorded at Deed Book 199 Page 93 - Parcel 1 and Deed Book 199 Page 97, said property being in the Northeast Quarter of Section 36, Township 1 South, Range 8 West, in the City of Southaven in Desoto County, Mississippi.

Commencing at the accepted Northeast corner of Section 36, Township 1 South, Range 8 West, in Desoto County, Mississippi, being the intersection of the centerline of Goodman Road (Mississippi 302) with the centerline of Airways Boulevard; thence in a Southwestwardly direction, along the centerline of Airways Boulevard (106 foot total Right Of Way as per Plat Book 55 Page 45) and the East line of Section 36, South 00 degrees 03 minutes 32 seconds West, a distance of 341.13 feet to a set 1/2 inch rebar, being the Northernmost Northeast corner of the remaining Goodman Road Associates, LTD property as recorded at Deed Book 199 Page 93 - Parcel 1 and Deed Book 199 Page 97, which this 34.2325 acre partition is a part, and the 'TRUE POINT OF BEGINNING' of said partition, also being the Easternmost Northeast corner of said partition; thence in a Southwestwardly direction, continuing along the proposed centerline of Airways Boulevard (under construction and as evidenced by Plat Book 57 Page 40) and the East line of the remaining Goodman Road Associates, LTD property and said partition, South 00 degrees 03 minutes 32 seconds West, a distance of 1097.14 feet to a set 1/2 inch rebar, being the Southeast corner of said partition; thence in a Southwestwardly direction, along the South line of this partition, South 89 degrees 53 minutes 21 seconds West, a distance of 1423.54 feet to a set 1/2 inch rebar, being the Southwest corner of said partition; thence in a Northwestwardly direction, along a West line of this partition, North 00 degrees 06 minutes 39 seconds West, a distance of 98.50 feet to a found 1/2 inch rebar, being an exterior corner of said partition, and the Southeast corner of Lot 4 of Southlake Commercial Subdivision as recorded at Plat Book 55 Page 44, and the Southwest corner of the Right Of Way for South Crest Parkway as recorded at Plat Book 55 Page 44; thence in a Northeastwardly direction, along a North line of the remaining Goodman Road Associates, LTD property and this partition, also being the South Right Of Way line of South Crest Parkway, North 89 degrees 53 minutes 21 seconds East, a called and measured distance of 90.00 feet (as per Plat Book 55 Page 44) to a set 1/2 inch rebar, being an interior corner of the remaining Goodman Road Associates, LTD property and this partition, also being the Southeast corner of the Right Of Way for South Crest Parkway; thence in a Northwestwardly direction, along the East Right Of Way line of South Crest Parkway and the West line of the remaining Goodman Road Associates, LTD property and this partition, North 00 degrees 06 minutes 39 seconds West, a distance of 937.96 feet to a set 1/2 inch rebar, being the Westernmost Northwest corner of said partition; thence in a Southeastwardly direction, along a North line of this partition, along a curve to the left having a radius of 25.00 feet, a delta angle of 90 degrees 00 minutes 00 seconds, an arc length 39.27 feet, a tangent length of 25.00 feet, a chord bearing of South 45 degrees 06 minutes 39 seconds East, and a chord length of 35.36 feet to a set 1/2 inch rebar, being a point of tangency in said North line; thence in a Northeastwardly direction, continuing along a North line of this partition, the following two (2) courses, North 89 degrees 53 minutes 21 seconds East, a distance of 32.41 feet to a set 1/2 inch rebar, being an angle point; thence North 81 degrees 38 minutes 16 seconds East, a distance of 521.76 feet to a set 1/2 inch rebar, being a point of curvature; thence continuing in a Northeastwardly direction, along a West line of this partition, along a curve to the left having a radius of 25.00 feet, a delta angle of 75 degrees 24 minutes 54 seconds, an arc length of 32.91 feet, a tangent length of 19.33 feet, a chord bearing of North 43 degrees 55 minutes 49 seconds East, and a chord length of 30.58 feet to a set 1/2 inch rebar, being a point of tangency in said West line; thence continuing in a Northwardly direction, along a West line of this partition, the following two (2) courses, North 06 degrees 13 minutes 22 seconds East, a distance of 160.63 feet to a set 1/2 inch rebar, being an angle point; thence North 00 degrees 08 minutes 18 seconds West, a distance of 79.85 feet to a set 1/2 inch rebar, being a point of curvature in said West line; thence in a Northwestwardly direction, along a South line of this partition, along a curve to the left having a radius of 25.00 feet, a delta angle of 91 degrees 04 minutes 07 seconds, an arc length of 39.74 feet, a tangent length of 25.47 feet, a chord bearing of North 45 degrees 40 minutes 22 seconds West, and a chord length of 35.68 feet to a set 1/2 inch rebar in the South Right Of Way line of Goodman Road (Mississippi 302), and the North line of the remaining Goodman Road Associates, LTD property, being the Northernmost Northwest corner of said partition; thence in a Northeastwardly direction, along the South Right Of Way line of Goodman Road and the North line of the remaining Goodman Road Associates, LTD property and this partition, the following two (2) courses, North 88 degrees 47 minutes 35 seconds East, a distance of 25.61 feet to a found concrete Right Of Way monument, being an angle point; thence North 89 degrees 19 minutes 10 seconds East, a distance of 82.38 feet to a set 1/2 inch rebar, being the Northernmost Northeast corner of said partition; thence in a Southwestwardly direction, along an East line of this partition, along a curve to the left having a radius of 25.00 feet, a delta angle of 89 degrees 27 minutes 28 seconds, an arc length of 39.03 feet, a tangent length of 24.76 feet, a chord bearing of South 44 degrees 35 minutes 26 seconds West, and a chord length of 35.19 feet to a set 1/2 inch rebar, being a point of tangency in an East line of said partition; thence in a Southeastwardly direction, along an East line of this partition, South 00 degrees 08 minutes 18 seconds East, a distance of 248.73 feet to a set 1/2 inch rebar, being an interior corner of said partition; thence in a Northeastwardly direction, along a North line of this partition, North 81 degrees 38 minutes 16 seconds East, a distance of 330.96 feet to a set 1/2 inch rebar, being an interior corner of said partition; thence in a Northwestwardly direction, along a West line of this partition, North 00 degrees 39 minutes 47 seconds West, a distance of 20.08 feet to a found 3/4 inch conduit, being an interior corner of the remaining Goodman Road Associates, LTD property and an exterior corner of said partition, also being the Southwest corner of Lot 6 of The First Addition to Southlake Commercial Subdivision as recorded at Plat Book 55 Page 45; thence in a Northeastwardly direction, along a North line of the remaining Goodman Road Associates, LTD property and this partition, also being a South line of Lot 6, North 89 degrees 31 minutes 00 seconds East, a called distance of 286.55 feet (as per Plat Book 55 Page 45), but a measured distance of 286.61 feet to a found 3/4 inch conduit in the West Right Of Way line of Airways Boulevard (106 foot total Right Of Way as per Plat Book 55 Page 45), being an exterior corner of the remaining Goodman Road Associates, LTD property and said partition; thence in a Southwestwardly direction, along the West Right Of Way line of Airways Boulevard and an East line of the Goodman Road Associates, LTD property and this partition, South 00 degrees 03 minutes 32 seconds West, a called and measured distance of 72.67 feet (as per Plat Book 55 Page 45) to a set 1/2 inch rebar, being an interior corner of the remaining Goodman Road Associates, LTD property and said partition, and the Southwest corner of the Right Of Way for Airways Boulevard; thence in a Northeastwardly direction, along a North line of the remaining Goodman Road Associates, LTD property and this partition, and a South Right Of Way line of Airways Boulevard, North 89 degrees 54 minutes 32 seconds East, a called distance of 53.00 feet (as per Plat Book 55 Page 45), but a measured distance of 52.48 feet to the 'TRUE POINT OF BEGINNING' and containing 34.2325 acres, more or less.

However, there exists on the above described property a 15 foot permanent sewer easement as recorded Deed Book 225 Page 281 (see also 221/185) and as shown on plat of survey.

However, there exists on the above described property a 20 foot permanent sewer easement, as recorded at Deed Book 310 Page 259, and as shown on plat of survey.

However, there exists on the above described property an access easement as recorded at Deed Book 310 page 292 and Deed Book 311 Page 513, and as shown on plat of survey.

However, there exists on the above described property a drainage easement as recorded at Deed Book 310 Page 292, and as shown on plat of survey.

However, there exists on the above described property a drainage easement as recorded at Deed Book 310 Page 272, and as shown on plat of survey.

However, there exists on the above described property a Mississippi Power and Light electric easement as recorded at Deed Book 214 Page 649, and as shown on plat of survey.

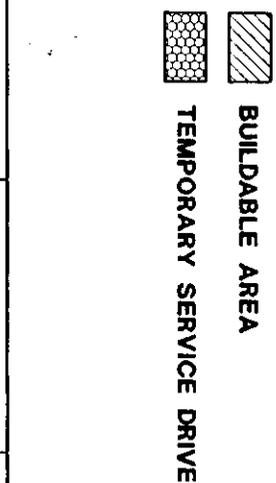
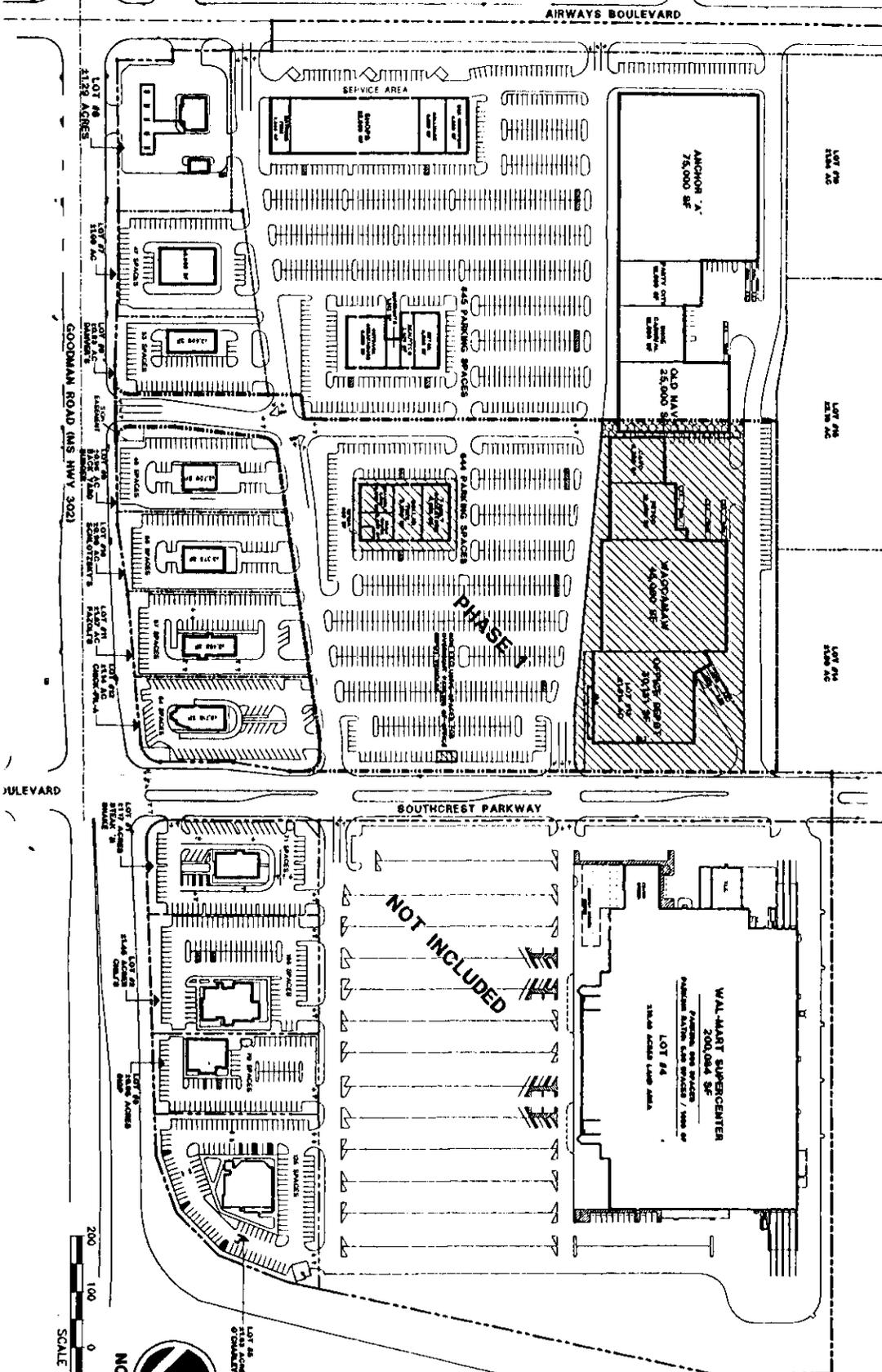
However, there exists on the above described property a 10 foot Mississippi Valley Gas Company gas easement as recorded at Deed Book 205 Page 391, and as shown on plat of survey.

EXHIBIT B  
DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS

Legal Description of Outparcel Lots

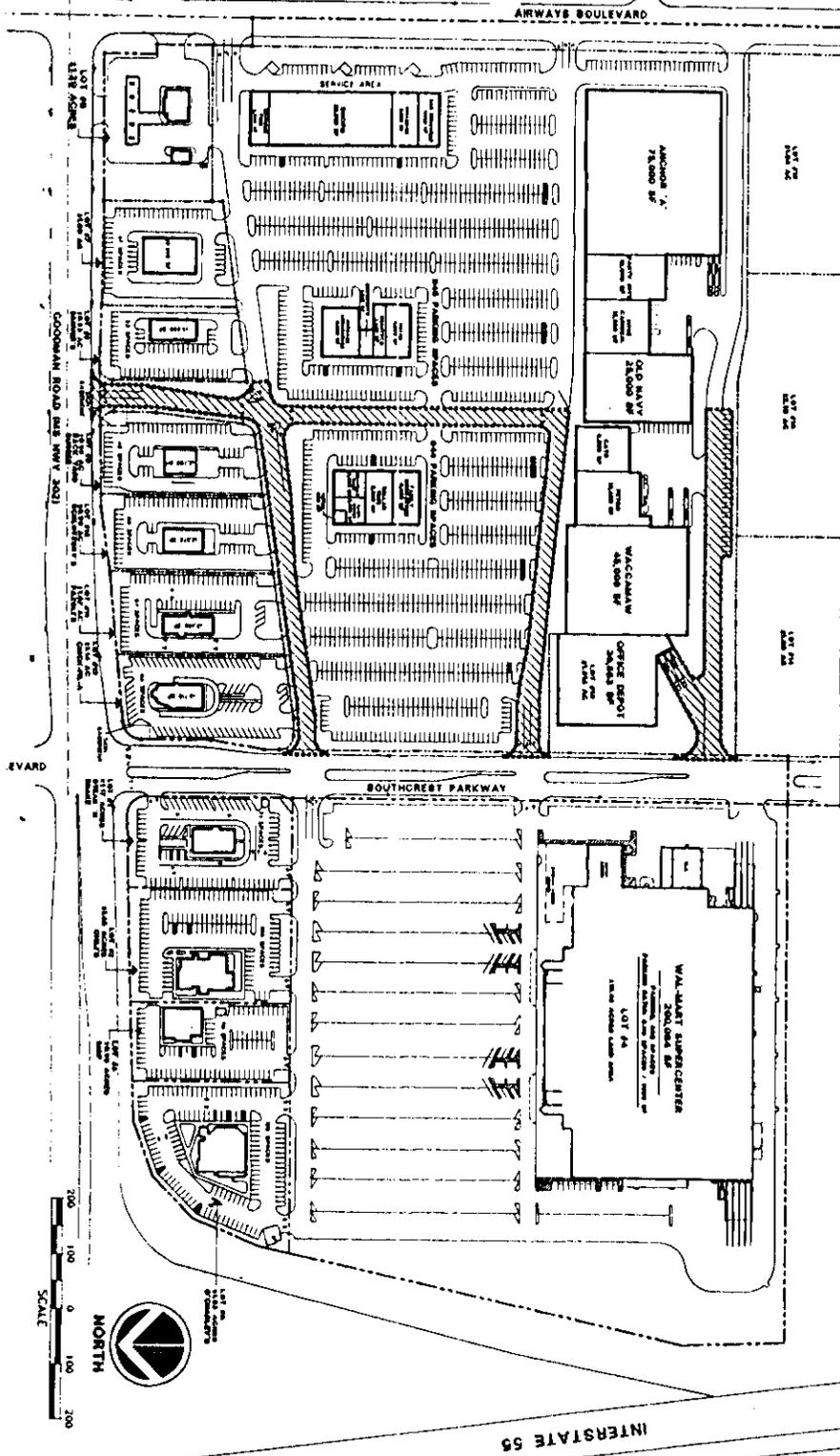
Lots 7 through 12, inclusive, South Lake Commercial Subdivision, Second Addition, in the Northeast Quarter of Section 36, Township 1 South, Range 8 West City of Southaven, DeSoto County, Mississippi, as shown by plat appearing of record in Plat Book 61, Page 19 in the office of the Chancery Clerk of DeSoto County, Mississippi..

Exhibit C



WAL-MART STMP CENTER OUT PARCELS	LAND AREA ACRES	BULD. AREA ACRES	PARKING SPACES	PARKING RATIO
LOT #1	1.17	4,500 SF	71 SPACES	15.77/1000 SF
LOT #2	1.48	5,000 SF	78 SPACES	17.00/1000 SF
LOT #3	0.98	4,000 SF	66 SPACES	16.34/1000 SF
LOT #4	1.24	4,500 SF	72 SPACES	17.56/1000 SF
LOT #5	1.00	4,000 SF	66 SPACES	16.00/1000 SF
LOT #6	1.00	4,000 SF	66 SPACES	16.00/1000 SF
LOT #7	0.83	3,000 SF	53 SPACES	15.34/1000 SF
LOT #8	0.98	3,700 SF	62 SPACES	17.77/1000 SF
LOT #9	0.98	3,700 SF	62 SPACES	16.59/1000 SF
LOT #10	1.07	3,465 SF	57 SPACES	16.45/1000 SF
LOT #11	1.14	3,770 SF	64 SPACES	17.26/1000 SF
LOT #12	1.30	4,000 SF	66 SPACES	16.92/1000 SF
LOT #13	1.30	4,000 SF	66 SPACES	16.92/1000 SF
LOT #14	1.54	4,000 SF	66 SPACES	16.92/1000 SF
TOTALS	64.89 ACRES	627,814 SF	1,126 SPACES	6.92/1000 SF

**SOUTH LAKE CENTRE**  
A DAL/CLARY JOINT  
VENTURE DEVELOPMENT



OFFICE DEPOT  
PROTECTED AREAS EXHIBIT

PROTECTED AREAS

**SOUTH LAKE CENTRE**

A DIAL/CLARY JOINT  
VENTURE DEVELOPMENT

WALMART LOT PARCELS	LAND AREA	BLDG. AREA	PARKING	PARKING RATIO
LOT 71	17 ACRES	4,800 SF	71 SPACES	16.77/1000 SF
LOT 72	138 ACRES	4,800 SF	105 SPACES	21.00/1000 SF
LOT 73	133 ACRES	4,800 SF	129 SPACES	26.24/1000 SF
LOT 74	128 ACRES	4,800 SF	70 SPACES	14.80/1000 SF
LOT 75	428 ACRES	4,800 SF	47 SPACES	11.22/1000 SF
LOT 76	428 ACRES	4,800 SF	48 SPACES	11.22/1000 SF
LOT 77	428 ACRES	4,800 SF	48 SPACES	11.22/1000 SF
LOT 78	428 ACRES	4,800 SF	48 SPACES	11.22/1000 SF
LOT 79	428 ACRES	4,800 SF	48 SPACES	11.22/1000 SF
LOT 80	428 ACRES	4,800 SF	48 SPACES	11.22/1000 SF
LOT 81	428 ACRES	4,800 SF	48 SPACES	11.22/1000 SF
LOT 82	428 ACRES	4,800 SF	48 SPACES	11.22/1000 SF
LOT 83	428 ACRES	4,800 SF	48 SPACES	11.22/1000 SF
LOT 84	428 ACRES	4,800 SF	48 SPACES	11.22/1000 SF
LOT 85	428 ACRES	4,800 SF	48 SPACES	11.22/1000 SF
LOT 86	428 ACRES	4,800 SF	48 SPACES	11.22/1000 SF
LOT 87	428 ACRES	4,800 SF	48 SPACES	11.22/1000 SF
LOT 88	428 ACRES	4,800 SF	48 SPACES	11.22/1000 SF
LOT 89	428 ACRES	4,800 SF	48 SPACES	11.22/1000 SF
LOT 90	428 ACRES	4,800 SF	48 SPACES	11.22/1000 SF
LOT 91	428 ACRES	4,800 SF	48 SPACES	11.22/1000 SF
LOT 92	428 ACRES	4,800 SF	48 SPACES	11.22/1000 SF
LOT 93	428 ACRES	4,800 SF	48 SPACES	11.22/1000 SF
LOT 94	428 ACRES	4,800 SF	48 SPACES	11.22/1000 SF
LOT 95	428 ACRES	4,800 SF	48 SPACES	11.22/1000 SF
LOT 96	428 ACRES	4,800 SF	48 SPACES	11.22/1000 SF
LOT 97	428 ACRES	4,800 SF	48 SPACES	11.22/1000 SF
LOT 98	428 ACRES	4,800 SF	48 SPACES	11.22/1000 SF
LOT 99	428 ACRES	4,800 SF	48 SPACES	11.22/1000 SF
LOT 100	428 ACRES	4,800 SF	48 SPACES	11.22/1000 SF
TOTALS	3448 ACRES	52,214 SF	1,129 SPACES	6.97/1000 SF

DEVELOPMENT

SOUTH LAKE CENTRE  
SOUTHAVE, MISSISSIPPI

PRELIMINARY SITE PLAN

CONSULTANTS

INCORPORATED

SP-32

96-101

06-101

06-101

06-101

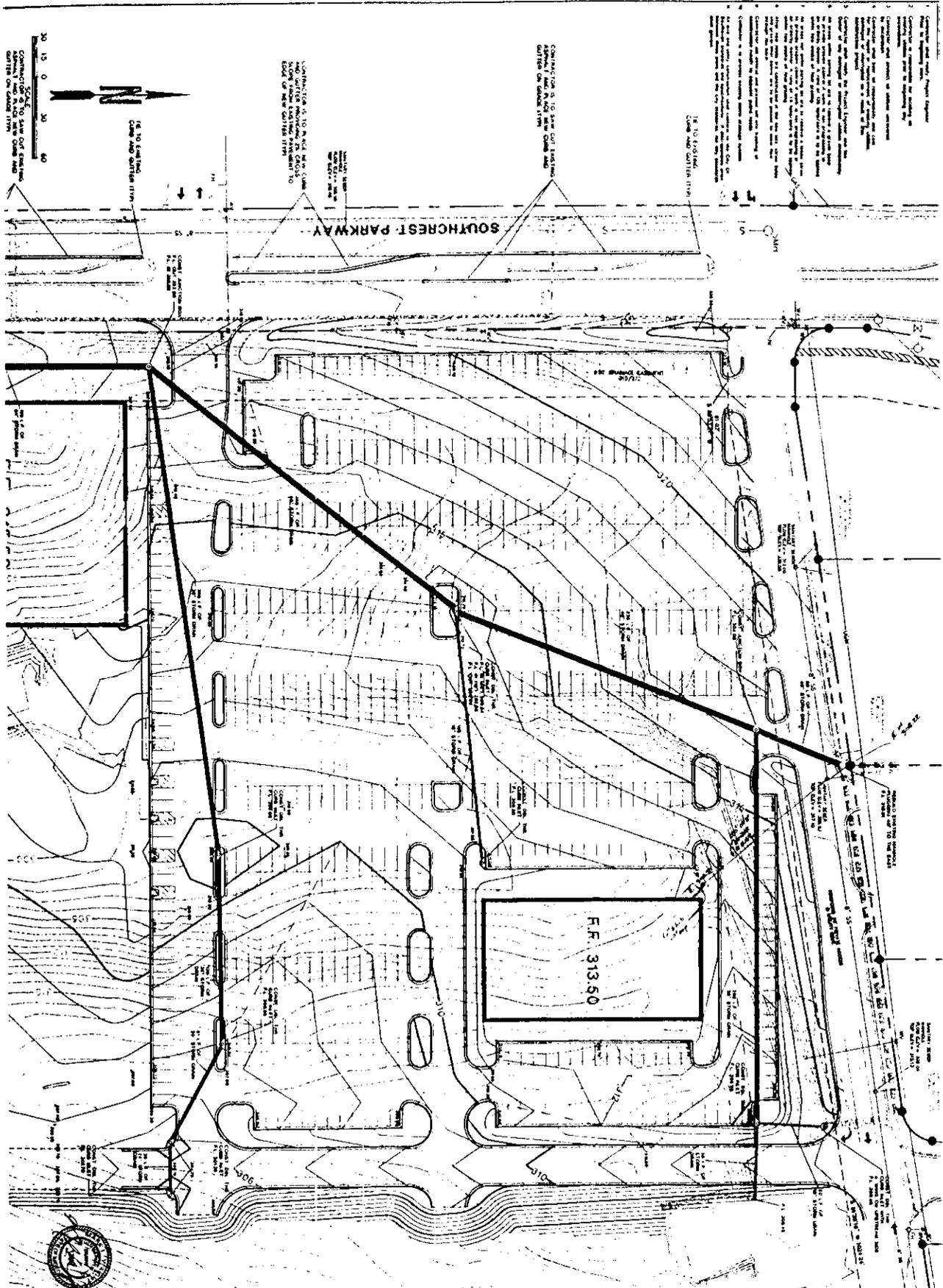
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DEVELOPMENT

CONSULTANTS

INCORPORATED

C-3

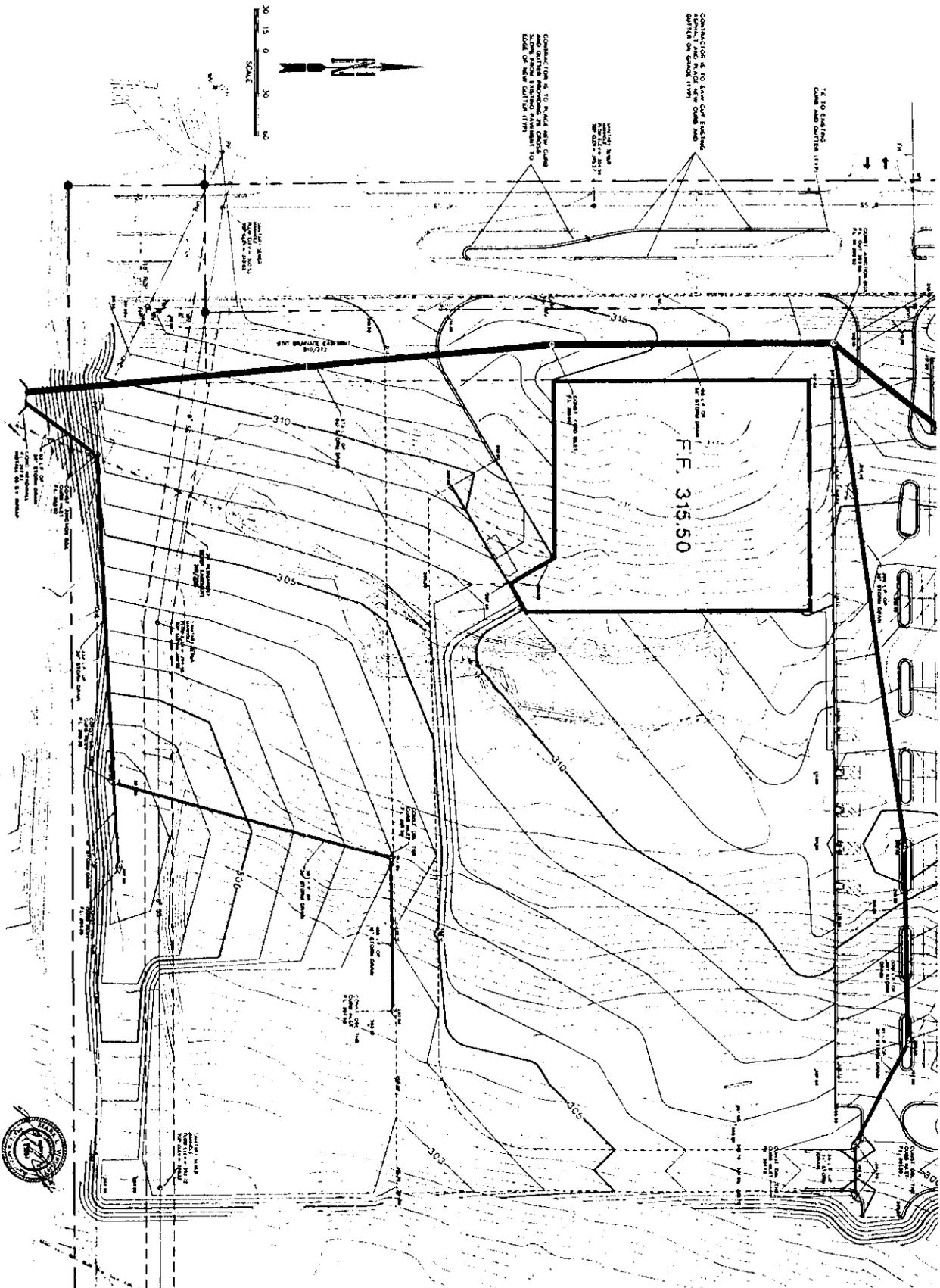
06-191

**SOUTHLAKE CENTRE - PHASE I**  
SOUTHLAKE, MISSISSIPPI

**GRADING AND DRAINAGE PLAN**

REVISION	DATE	BY	CHKD.

SOUTH LAKE DRIVE  
 SOUTHWEST PARKWAY  
 F.R. 313.50  
 11-16-08  
 M.L.W.  
 CONSULTANT  
 SOUTH LAKE DRIVE  
 SOUTHWEST PARKWAY  
 F.R. 313.50  
 11-16-08  
 M.L.W.  
 CONSULTANT  
 SOUTH LAKE DRIVE  
 SOUTHWEST PARKWAY  
 F.R. 313.50  
 11-16-08  
 M.L.W.  
 CONSULTANT



DEVELOPMENT CONSULTANTS INCORPORATED

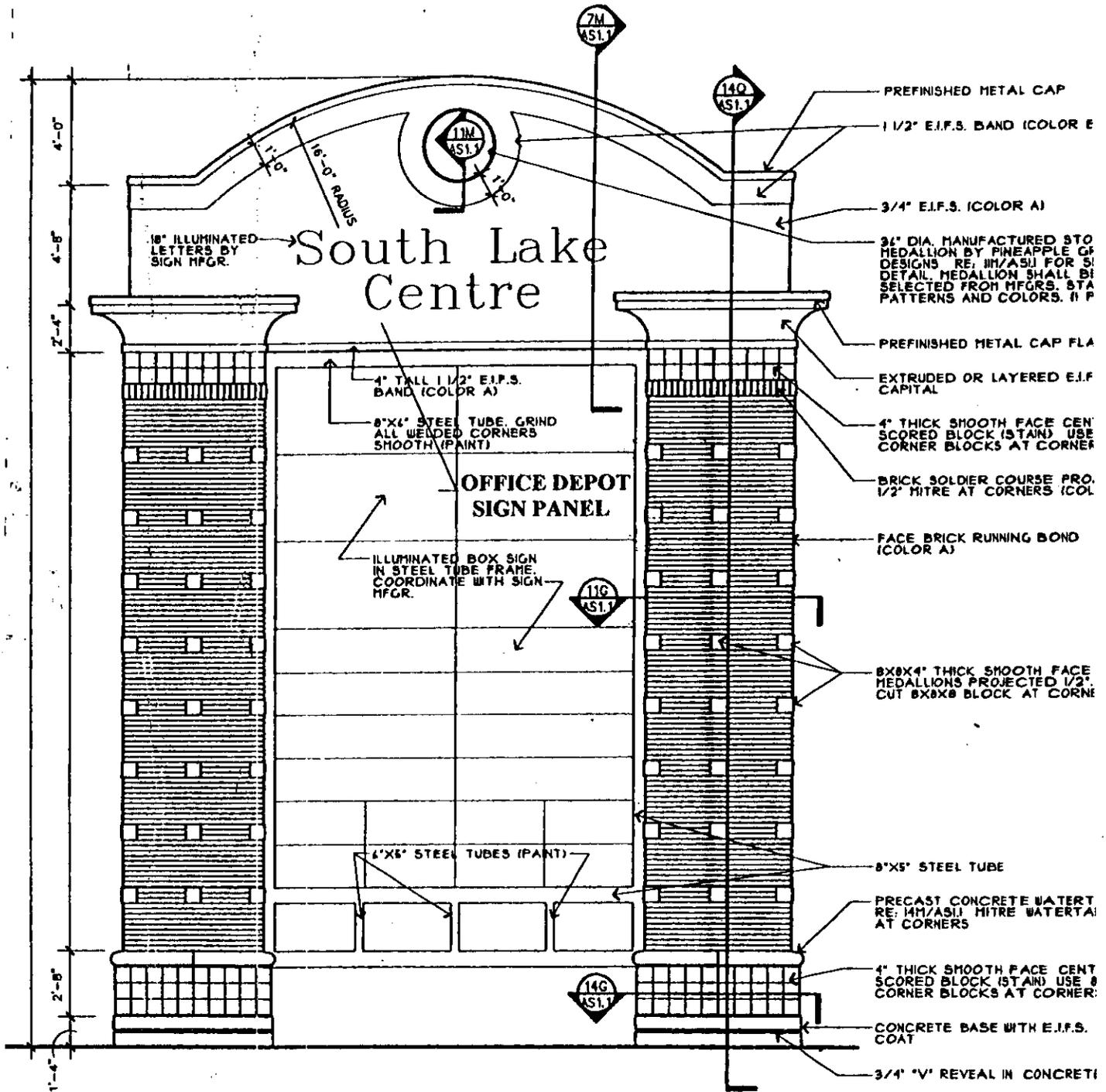
**SOUTHLAKE CENTRE - PHASE I**  
 SOUTHAVEN, MISSISSIPPI  
**GRADING AND DRAINAGE PLAN**

DATE	11-14-88
SCALE	1" = 30'
PROJECT NO.	11-14-88
DESIGNED BY	
CHECKED BY	
APPROVED BY	

DEVELOPMENT CONSULTANTS INCORPORATED  
 11111 RIVERCHASE DRIVE  
 SUITE 100  
 FORT WORTH, TEXAS 76154  
 (817) 338-1111



C-4  
 96-191



NOTE: SIGN SHALL BE FIELD LOCATED  
BY CIVIL ENGINEER

7A SIGN ELEVATION (OTHER SIDE IDENTICAL)  
SCALE: 1/4" = 1'-0"