When recorded, return to: 0716 724 4681401

Mr. John C. Czaja
Suite 200
1211 Park Avenue
San Jose, California 95126

0716 724

Recorded at the request of
Lawyers Title Insurance Corp.

JAN 8 1974 8:00AM

GEORGE A. MANN, Recorder
Santa Clara County, Official Records

20.00

DECLARATION OF COVENANTS
AND ENCUMBRANCES

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This Declaration of Covenants and Encumbrances is made as of this 26th day of December, 1973, by:

DESIN DEVELOPMENT CO., a general partnership, hereinafter referred to as "Developer".

SAV-ON-REALTY, INC., a California corporation, hereinafter referred to as "Sav-On",

and

ALBERTSON'S INC., a Delaware corporation, hereinafter referred to as "Albertson's",

sometimes hereinafter collectively referred to as "Declarants." This instrument is, for convenience, hereinafter referred to as the "Declaration".

PRELIMINARY

1. Declarants are the owners of adjoining real property located at the northeast corner of the intersection of Branham Lane and Meridian Avenue in the City of San Jose, County of Santa Clara, State of California, as shown on the plan attached as Exhibit "A", and as described as Lots 1, 2 and 3 of Tract No. 5414 recorded in the office of Santa Clara County Recorder in Book 334 of Maps at Page 53, and hereinafter referred to as the "Shopping Center. The following Declarants are owners of the following parcels indicated on Exhibit "A": Sav-On, Parcel 1; Developer, Parcel 2; and Albertson's, Parcel 3.

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2. Declarants plan to develop the Shopping Center as an integrated retail sales complex for the mutual benefit of all real property in the Shopping Center, and for such purposes do hereby establish easements, covenants, restrictions, liens and charges (hereinafter collectively referred to as "Restrictions"), subject to which all of said Shopping Center, or any part thereof shall be improved, held, leased, sold and/or conveyed. Such Restrictions shall run with the land and shall inure to and pass with said property and shall apply to and bind the respective successors in interest thereof, and all and each thereof is imposed upon said property as a mutual equitable servitude in favor of said property and any portion thereof.

I. BUILDING AND COMMON AREA DEVELOPMENT

1. Building Area: Subject to the requirements set forth in Paragraph 3 of this Section I, all buildings and structures shall be single story with optional mezzanine areas (except for approximately 3,000 square feet of second story area in Parcel 2) and shall only be placed or constructed upon the respective parcels in the Shopping Center in those hatched areas designated on said Exhibit "A", as Building Area; and further, no buildings or structures shall be placed or constructed in the Shopping Center within those areas on each respective parcel designated as Common Area (as defined in Paragraph 2) on Exhibit "A" except pylon and directional signs, as provided in Section III, bumper guards or curbs, landscape planters, lighting standards, and any other landscaping

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improvements as may be required under applicable controls and regulations of the City of San Jose, or the County of Santa Clara, or any other governmental body having jurisdiction over the Shopping Cente[redacted] In addition, it is also agreed that each of the parties hereto may construct and locate such ancillary portions of the buildings so as to make them usable for their intended use, including but not limited to canopies and roof overhangs projecting from such Building Area, including columns or pillars supporting the same, normal foundations, and doors for ingress and egress may project from such Building Area. All the foregoing must comply with all applicable laws, rules, ordinances and regulations of all governmental authorities sharing jurisdiction.

2. Common Area. The aforementioned Common Area is hereby defined to include all of those areas (as shown on Exhibit "A") on each of the respective parcels of the Shopping Center not defined as Building Area, which Common Area shall be used for vehicular driving, parking and pedestrian traffic (which areas also include all sidewalks, walkways, driveways and landscaping). It is understood that the Common Area may be increased with respect to all parcels of the Shopping Center. This means that those portions of the Building Area on each parcel within the Shopping Center which shall not or cannot under the terms of this Declaration be used for buildings (in order to maintain the respective

parking requirements set forth below in Paragraph 3) shall become part of the said Common Area to be used for the aforesaid vehicular driving, parking and pedestrian traffic areas and shall be improved, kept and maintained as provided for in that certain Common Area Maintenance Agreement between the parties of even date with this Agreement. No portion of the Common Area or sidewalks shall be used for the promotion, display, advertising or sale of goods or services nor for the distribution of written or printed materials nor for the installation, maintenance or use of entertainment devices.

3. Common Area Requirements. Anything to the contrary notwithstanding, each respective parcel within the shopping center must comply with the Common Area requirements set forth herein for that parcel. The Common Area (as defined above in Paragraph 2 of this Section I) for each respective parcel shall not be less than 2.90 times the square footage of floor area contained in all buildings (but excluding mezzanines therein) allowed to be built on each of the said parcels. It is understood that the cross-hatched areas designating Building Area for each respective parcel on Exhibit "A" is only to show where buildings may be located; but the entire amount of Building Area so designated for any parcel is not necessarily to be used for buildings. The maximum square footage of floor area contained in all buildings (but excluding mezzanines therein) situated on each of the said parcels is indicated as "Max. Bldg. Area" in the Shopping Center Parcel Statistics indicated on Exhibit "A" for each respective parcel.

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4. Changes in Common Area: Unless required by the City of San Jose, or the County of Santa Clara, or some other governmental authority, the location and size of any and all sidewalks, parking stalls, walkways, driveways and landscaping in the said Common Area shall not be changed from the manner set forth above and on Exhibit "A" except by the written consent of the owners and occupants of ninety percent (90%) of the total land area of the Shopping Center. If the parties agree to any material change in the above or in Exhibit "A" then a new exhibit will be recorded as an amendment to this Declaration.

5. Type and Design of Buildings: No buildings shall be erected, altered, placed or permitted to remain within the Shopping Center that are not of the same type and quality of design, materials and workmanship as is consistent with other modern shopping centers now existing in Northern California.

(a) It is agreed that each building in the Shopping Center, now and in the future, will be of first quality construction and architecturally designed so that the exterior elevation (including signs) and color thereof will be architecturally and aesthetically compatible and harmonious with all other buildings of said Shopping Center. It is further agreed that the exterior design, color and elevations (including signs) of any building in the Shopping Center must first be approved in writing by the owners of Parcels 1, 2, and 3 (which approval shall not be unreasonably withheld), except that the standard signs of Save-On and Albertson's as they may exist from time to time in their

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require such approval. Prior to construction of any new building or buildings upon any of the respective parcels within the Shopping Center, and prior to any exterior changes, alterations or modifications of any existing building or buildings, the party who desires to construct such building or buildings or make such exterior changes, alterations or modifications shall submit to the owners of Parcels 1, 2, and 3 whatever portion of its plans, specifications, drawings and other pertinent information is necessary for the owners of Parcels 1, 2, and 3 to adequately review the exterior design, color and elevations (including signs, except the aforesaid standard signs of Sav-on and Albertson's) that are proposed for all buildings, and thereupon either approve or disapprove of the same and shall obtain the approval of said owners. No owner may arbitrarily or unreasonably withhold its approval of such plans and specifications if same are in conformity with the intent of this paragraph. If approval or disapproval of any such plans and specifications (as accompanied by the pertinent information and drawings) is not given within thirty (30) days from receipt thereof, then the owner failing to act within said time period shall be deemed to have approved such plans and specifications. If any owner rejects or disapproves such plans and specifications, then said owner must provide a written explanation in reasonable detail within the said thirty (30) day time period, its reasons for disapproving, failing which explanation, the plans and specifications shall be deemed to be approved. If the plans and specifications of any party are disapproved as provided herein, then it may

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require such approval. Prior to construction of any new building or buildings upon any of the respective parcels within the Shopping Center, and prior to any exterior changes, alterations or modifications of any existing building or buildings, the party who desires to construct such building or buildings or make such exterior changes, alterations or modifications shall submit to the owners of Parcels 1, 2, and 3 whatever portion of its plans, specifications, drawings and other pertinent information is necessary for the owners of Parcels 1, 2, and 3 to adequately review the exterior design, color and elevations (including signs, except the aforesaid standard signs of Sav-on and Albertson's) that are proposed for all buildings, and thereupon either approve or disapprove of the same and shall obtain the approval of said owners. No owner may arbitrarily or unreasonably withhold its approval of such plans and specifications if same are in conformity with the intent of this paragraph. If approval or disapproval of any such plans and specifications (as accompanied by the pertinent information and drawings) is not given within thirty (30) days from receipt thereof, then the owner failing to act within said time period shall be deemed to have approved such plans and specifications. If any owner rejects or disapproves such plans and specifications, then said owner must provide a written explanation in reasonable detail within the said thirty (30) day time period, its reasons for disapproving, failing which explanation, the plans and specifications shall be deemed to be approved. If the plans and specifications of any party are disapproved as provided herein, then it may

submit alternate plans and specifications, which alternate proposal shall be handled in the same manner as the initial proposal.

(b) Any building built on any portion of the Shopping Center shall be either equipped with such automatic sprinkler systems as meet all of the standards of the Insurance Services Office (or other similar local organization having jurisdiction) or shall be constructed in such a manner as not to adversely affect the fire rating of any building built upon any other parcel. The purpose of this paragraph is to allow buildings built on each separate parcel to be fire rated as separate and distinct units without deficiency charge.

II. EASEMENTS

1. Ingress, Egress, and Parking: Each party hereto, as grantor, hereby grants to the other parties for the benefit of said other parties their respective successors, assigns, tenants, employees, agents, customers and invitees, and the customers, employees and invitees of such tenants, and for the benefit of each respective parcel or parcels belonging to the other parties as grantees, the right in common with each other of mutual nonexclusive ingress and egress by vehicular and pedestrian traffic and the right of vehicular parking upon, over and across that portion of the "common area" within the grantor's parcel or parcels. It is understood that the aforesaid reciprocal rights of ingress and egress shall apply to the Common Area for each parcel of the Shopping Center as such area shall be increased pursuant to Paragraph 2 of Section I above.

2. Utility Lines: Each party hereto, as grantor, hereby grants to the other parties, for the benefit of said other parties, nonexclusive easements under, through and across the Common Area of each party's parcel for water drainage systems or structures, water mains, sewers, water sprinkler system lines, telephones or electrical conduits or systems, gas mains, other public utilities and service easements. All such systems, structures, mains, sewers, conduits, lines and other public utilities shall be installed and maintained below the ground level or surface of such easements. In the event it is necessary for any party hereto to cause the installation of a storm drain, utility line or sewer across the Common Area subsequent to the initial paving and improving thereof, the parties agree not to unreasonably withhold the granting of an additional easement or easements; provided, however, that the granting of such easement or easements does not unreasonably interfere with the normal operation of any business in the Shopping Center.

3. Signs: Each party hereto, as grantor, hereby grants to the other parties, for the benefit of said other parties, easements under, through and across the Shopping Center to each other for the purpose of installing and maintaining the free standing pylon signs hereinafter referred to in Section III of this Declaration.

4. Canopies and Eaves: Each of the parties hereto hereby grants to the other parties for the benefit of said other parties and their respective parcels, an easement for

canopies, eaves, and roof overhangs appurtenant to any buildings or structures on any parcel of the Shopping Center which may encroach into or over an adjoining parcel; provided such encroachment has been first approved in writing by the party on whose parcel the encroachment occurs.

5. Building Encroachments: It is recognized that by reason of construction errors, the walls of buildings located in the Shopping Center may not fall exactly within the Building Area of the parcels shown on Exhibit "A", or the walls of such buildings may encroach beyond the boundary lines of said parcels. In either such event, the parties hereto shall each join in the execution of an agreement, which agreement shall be recorded, amending Exhibit "A" to reflect the "as built" conditions. In addition, if requested, the owner of the parcel which has the burden of the encroachment agrees to grant to the other party an easement for, or quitclaim to, (for the benefit of the encroaching parcel), that portion of the burdened parcel covered by the encroachment. Nothing herein contained shall be deemed to relieve or excuse any party hereto from exercising all due diligence to construct its building improvements within the respective parcel and Building Area, as shown on Exhibit "A".

III. OPERATION OF COMMON AREA

1. Employee Parking: Anything to the contrary notwithstanding areas to be used for motor vehicle parking purposes by employees of occupants of the Shopping Center may be designated within the Shopping Center from time to time by unanimous consent of the owners of Parcels 1, 2, and 3.

In the event employee parking areas are designated as provided herein then employees of any owner, lessee, or other occupant of any part of the Shopping Center shall use only those portions of the Common Area designated for such motor vehicle parking purposes. The authority herein granted shall be exercised in such manner as not to discriminate against any owner or commercial establishment in the Shopping Center.

2. Signs: One (1) free-standing pylon sign may be erected at the location designated "Shopping Center Sign" on Exhibit "A" hereto and shall contain the respective trade names of the owners of Parcel 1 and 3, and the cost of erecting and maintaining said sign pylons shall be paid for by the owners of Parcels 1 and 3, whose names appear on such pylons. In addition, at Developer's election, the pylon sign may also contain the trade name for the Shopping Center, or the name of one occupant of the buildings constructed on Parcel 2, which shall be equal in size to the other trade name identifications thereon, if for the Shopping Center identification, or one-half (1/2) thereof if for an occupant of Parcel 2; provided, however, that if Developer elects to install a Shopping Center identification sign, or a sign identifying one occupant of the buildings constructed on Parcel 2, then the owner of Parcel 2 shall pay the cost of such sign together with its proportionate share of the costs of erecting and maintaining the sign pylon. No signs other than the signs provided hereinabove and directional signs for guides upon the parking driveway areas shall be erected or maintained upon said Common Area except those obtained by

the unanimous written approval of the owners of Parcels 1, 2 and 3. All signs hereinabove referred to shall require the approval as to size and design of the parties hereto except for the standard signs of Sav-On and Albertson's.

3. In the absence of an agreement among the owners of all of the property comprising the Common Areas, to clean, maintain and repair such areas in a slightly, serviceable and safe condition, each owner shall be responsible to so clean and maintain the Common Area within its parcel.

IV. RESTRICTIONS ON USE

1. Food Market Restrictions: Except as specifically provided herein, the owners of Parcels 1 and 2 agree, for the benefit of Parcel 3, that no portions of Parcels 1 and 2 will be used for the sale (for off-premises consumption) of the following items (whether canned, fresh, frozen or smoked): general groceries, meats, poultry or fish, fruits, vegetables, or any combination of the foregoing items. It is provided, however, that the above restriction shall not apply to a Sav-On drug store (being the type of drug store known as a super-drug store operated by Sav-On, whether as owner or as a lessee or tenant of the owner of said Parcel 1 or some part thereof), so long as such items as are sold do not include fresh or frozen meat, fish, poultry, or produce. The above restrictions shall not prohibit the operation of a delicatessen on Parcel 2 containing not more than 1,500 square feet.

2. Drug Store Restrictions: Except as specifically provided herein, the owners of Parcels 2 and 3 agree, for the benefit of Parcel 1, that no portions of Parcels 2 and 3 shall

ever be used for a drug store or a store compounding prescriptions (whether separately or as a part of another entity), or a store handling and selling patent or other medicines or drugs, including but not limited to any and all items of merchandise which, under any law, rule, regulation or other promulgation by a competent governmental authority must be sold by, or in the presence of, a registered pharmacist; provided, however, that without limiting or expanding the foregoing restriction, said restriction shall not be deemed to apply to, or to include in its terms an Albertson's market (being a market operated by Albertson's Inc., whether as owner or as a lessee or tenant of Parcel 3 or some part thereof), its lessee or its tenants or successors to Parcel 3, selling items customarily sold by other Albertson's stores, or its successors or assigns, upon the condition that it or they continue to conduct a typical grocery store or supermarket business on Parcel 3 and so long as such items as are customarily sold are not required to be sold by, or in the presence of, a registered pharmacist as aforesaid.

3. Additional Restrictions. So long as either Sav-On, or Albertson's, their respective successors and assigns, conduct their respective businesses on Parcel 1 (Sav-On drug store) and Parcel 3 (Albertson's supermarket) then the following restrictions shall apply to certain parcels of the Shopping Center:

(a) Parcels 1, 2 and 3 shall not be used for a movie theater, bowling alley, skating rink, restaurant, car wash, bar or tavern, or for the rental, leasing or sale

or displaying for the purpose of renting, leasing or sale of any motor vehicles or trailers.

(b) Parcel 2 shall not be used for a beauty supply, camera shop, photographic supply store, nor for the sale of alcoholic beverages, except for on premises consumption so long as such premises are not located within 150 feet of any building on Parcels 1 or 3.

(c) Alcoholic beverages sold on either Parcel 1 or 3 shall occur only as a department within the principal building on each respective parcel and not as a business served by a separate entrance.

V. GENERAL PROVISIONS

1. Covenants Run with the Land: Each easement, restriction and covenant over Parcels 1, 2 and 3 shall be appurtenant to and for the benefit of the other parcels in the Shopping Center and each part thereof. Each covenant, restriction and undertaking as to Parcels 1, 2 and 3 shall be a burden thereon for the benefit of the other parcels and each part thereof, and shall run with the land.

This Declaration and the easements, covenants, restrictions, benefits and obligations created hereby shall inure to the benefit of and be binding upon Declarants and their successors and assigns, provided, however, that if any owner sells any portion or all of its interest in any parcel owned by such owner, the vendor shall thereupon be released and discharged from any and all further obligations under this Declaration as such owner in connection with the property sold by it.

2. Duration: Except as otherwise provided herein, each easement, setback line, covenant, restriction and undertaking of this document shall be for the term of sixty-five (65) years from the date hereof.

3. Injunctive Relief: In the event of any violation or threatened violation by any owner, lessee or occupant of any portion of the Shopping Center of any of the terms, covenants and conditions herein contained, in addition to the other remedies herein provided, or provided by law, any or all of the owners of the property included within the Shopping Center, shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction.

4. Modification Provision: This Declaration may not be modified in any respect whatsoever or rescinded, in whole or in part, except with the consent of the owners of ninety percent (90%) of the total square footage comprising the Shopping Center, plus the tenants of Parcels 1, 2 and 3, if any, at the time of such modification or rescission, and then only by written instrument duly executed and acknowledged by all of said owners and said tenants, if any, duly recorded in the office of the Recorder of Santa Clara County.

5. Method of Approval: Wherever the approval or consent of an owner is required, such approval or consent shall be exercised only in the following manner:

The record owners and/or prime lessees of each parcel shall be entitled to only one vote for each parcel. The record owners and prime lessees of each

parcel shall agree among themselves and designate to the record owners of each of the other parcels a single person or entity who is entitled to cast the vote for such parcel. In the event as to any parcel the record owners and prime lessees thereof cannot agree who shall be entitled to cast said single vote of such parcel, such parcel shall not be entitled to vote. The term "prime lessee", as used herein shall mean a leaseback lessee of an entire parcel, its successors and assigns and does not include sublessees, licensees or concessionaires of such primary lessees.

6. Not a Public Dedication: Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Shopping Center to the general public or for the general public or for any public purposes whatsoever, it being the intention of the Declarants that this Declaration shall be strictly limited to and for the purposes herein expressed.

7. Breach Shall Not Permit Termination: It is expressly agreed that no breach of this Declaration shall entitle any owner to cancel, rescind or otherwise to terminate this Declaration, but such limitations 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. Any breach of any of said covenants or restrictions, however, shall not defeat, or render invalid the lien of any mortgage or deed of trust made in good faith for value, but such covenants

or restrictions shall be binding upon and effective against such owner of any of said property or any portion thereof whose title thereto is acquired by foreclosure, trustee sale, or otherwise.

8. Severability: If any clause, sentence or other portion of this Declaration shall become illegal, null, or void for any reason, or shall be held by any court of competent jurisdiction to be so, the remaining portions thereof shall remain in full force and effect.

IN WITNESS WHEREOF, Declarants have duly executed this Declaration on the day and year first hereinabove set forth.

DESIN DEVELOPMENT CO.,
A General Partnership

By _____
John C. Czaja, General Partner

SAV-ON-REALTY, INC.,
A California Corporation

By _____

By _____
Secretary-Treasurer

ALBERTSON'S, INC.,
A Delaware Corporation

By _____
Senior Vice President

By _____
Secretary

STATE OF CALIFORNIA)
) ss.
COUNTY OF MARIN)

On this 5th day of December, 1973, before me, the undersigned, a Notary Public in and for said State, personally appeared JOHN C. CZAJA, known to me to be a General Partner of the partnership that executed the within instrument, and acknowledged to me that such partnership executed the same.

WITNESS my hand and official seal.

Thomas E. Schaal

OFFICIAL SEAL
THOMAS E. SCHAAL
NOTARY PUBLIC - CALIFORNIA
MARIN COUNTY

STATE OF CALIFORNIA)
) ss.
COUNTY OF Los Angeles)

On this 11 day of December, 1973, before me, the undersigned, a Notary Public in and for said State, personally appeared Ira D. Brown known to me to be the President, and F. Wayne Withers known to me to be the Secretary-Treasurer of Sav-On Realty, Inc., that executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its bylaws or a resolution of its board of directors.

WITNESS my hand and official seal.

Jacqueline E. Driessen

OFFICIAL SEAL
JEACQUELINE E. DRIESSEN
NOTARY PUBLIC-CALIFORNIA
LOS ANGELES COUNTY
My Commission Expires Oct. 3, 1977

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

On this 28th day of December, 1973, before me, the undersigned, a Notary Public in and for said State, personally appeared PAUL W. HOOSER & MONNIE O. ARMSTRONG known to me to be the Senior Vice President, and _____ known to me to be the Secretary of Albertson's Inc., that executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its bylaws or a resolution of its board of directors.

WITNESS my hand and official seal.

Notary Public

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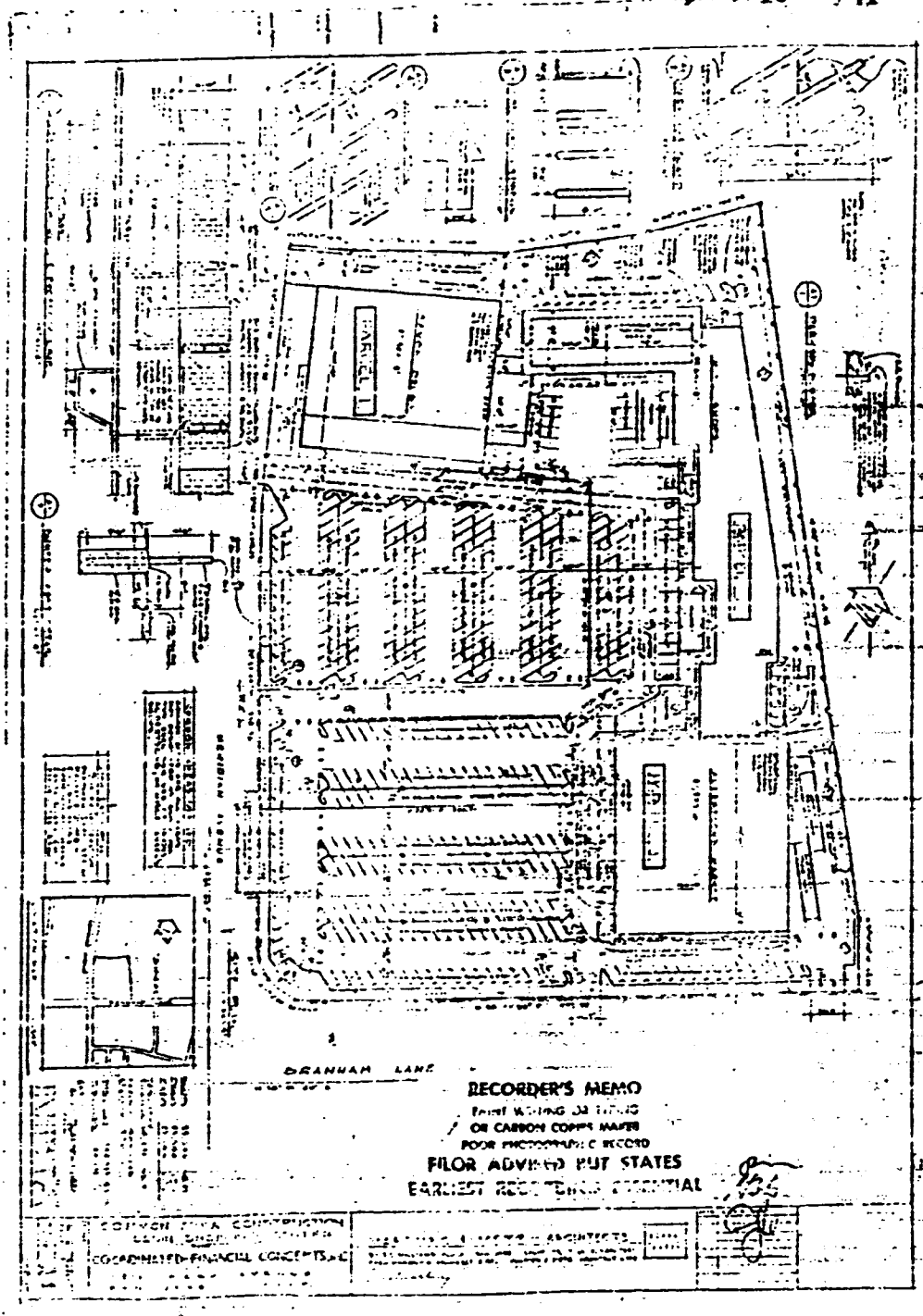

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