

# UNOFFICIAL COPY

**THIS INSTRUMENT PREPARED BY AND AFTER RECORDING SHOULD BE RETURNED TO:**

The Law Offices of Nancy Schiavone  
54 West Hubbard  
Concourse Level  
Chicago, Illinois 60610  
Attention: Nancy Schiavone

*This Space for Recorder's use only*



Doc#: 0532627033 Fee: \$64.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 11/22/2005 10:38 AM Pg: 1 of 21

Jay N. Sales 4th Fl.  
8323392 - JN

## TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

**THIS TEMPORARY CONSTRUCTION EASEMENT AGREEMENT** ("Agreement") is made and entered into this 15 day of October, 2005, by and between **SEARS, ROEBUCK AND CO.**, a New York corporation, with its office and principal place of business at 3333 Beverly Road, Hoffman Estates, Illinois 60179 ("Grantor"), and **REALTY AMERICA GROUP (LINCOLN MALL), LP**, a Texas limited partnership, with its office and principal place of business at 208 Lincoln Mall Drive, Matteson, IL - 60443 ("Grantee").

**WHEREAS**, Grantor is the holder of fee simple title to the property legally described in Exhibit A, attached hereto and made a part hereof (the "Grantor Parcel");

**WHEREAS**, Grantee is the holder of fee simple title to the property adjacent to the Grantor Parcel legally described on Exhibit B attached hereto and made a part hereof (the "Grantee Parcel");

**WHEREAS**, Grantor and Grantee desire to have certain improvements made to a portion of the Grantor Parcel legally described on Exhibit C attached hereto and made a part hereof and depicted on Exhibit C-1 attached hereto and made a part hereof (the "Easement Parcel") consisting of the demolition of existing improvements and construction of access roads, including without limitation, a new ring road for the Lincoln Mall, and parking lot improvements ("Construction Work"), in accordance with plans and specifications prepared by V3 Consultants and designated "Preliminary Sears Layout Plan" dated May 11, 2005 (the "Plans");

**WHEREAS**, Grantee has requested from Grantor a temporary construction easement, over, upon, and across the Easement Parcel, for the purpose of the construction of the Construction Work on the Easement Parcel in accordance with the Plans; and

**WHEREAS**, Grantor has agreed to grant such easement upon the terms and conditions set forth herein.

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

**Box 400-CTCC**

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1. Grant of Easement. Grantor hereby grants to Grantee, its contractors, subcontractors, licensees and Grantee's successors and assigns, as an easement appurtenant to the Grantee Parcel, a non-exclusive, temporary construction easement for use by the Grantee, over, under, upon, and across the Easement Parcel, for the purpose of performing the Construction Work.
2. Term of Easement. The term of the easement granted herein shall commence on the date hereof and shall terminate when the Construction Work has been completed by Grantee in accordance with the Plans and Grantee has obtained the appropriate governmental approvals that the Construction Work has been completed in accordance with the Plans.
3. Physical Requirements of Site, Laws, etc. All Construction Work shall be performed in (i) substantial compliance with the Plans, and (ii) in compliance with all applicable laws, rules and regulations. Each party acknowledges and agrees that it has reviewed and does hereby approve the Plans. There shall be no deviation from the Plans without the prior written approval and consent of the Grantor, which approval shall not be unreasonably withheld, conditioned or delayed. Grantee shall procure those building and other permits required for the performance of the Construction Work and Grantor covenants and agrees to cooperate and assist Grantee in such procurement to the extent Grantee determines Grantor's assistance is necessary or otherwise required.
4. Construction Staging Area and Schedule. The Construction Work shall be staged only within those areas of the Grantor Parcel agreed to by Grantor and Grantee. Prior to the commencement of any construction by Grantee, Grantee shall submit to Grantor (i) access routes which Grantee agrees to require its Contractors (as that term is hereinafter defined) to utilize during the course of construction; (ii) construction worker's parking area; and (iii) a time schedule indicating the approximate dates upon which Grantee shall complete various significant components of the Construction Work. Grantee will coordinate the performance of the Construction Work with Grantor's designated representative. Grantee agrees that no portion of the Construction Work will be performed by Grantee during the period beginning November 18, 2005 and ending January 2, 2006.
5. Construction Activities. In connection with the Construction Work, Grantee agrees, as needed, to cause the cleaning of any construction debris which is caused by said construction vehicles. Further, Grantee shall, as needed, cause the cleaning and clearing away from the site of debris from and during the razing of any existing improvements during demolition and the construction of new improvements to the extent incident to the Construction Work.
6. Interference. The Construction Work shall at all times be performed in accordance with the phasing plan attached hereto as Exhibit D, which the parties agree will not unreasonably interfere with the (i) operations conducted in the remainder of the Grantor Parcel, and (ii) the ingress or egress to and from, access and parking on the Grantor Parcel.
7. Indemnification. Grantee covenants to defend, indemnify and hold harmless Grantor from and against all claims, liabilities, obligations, demands, damages, costs, and expenses (including, without limitation, reasonable attorneys fees and expenses) incurred in connection with, arising from or as a result of (i) any breach of any this Agreement by Grantee which is not cured within fourteen (14) days after written notice to Grantee; and/or (ii) any accident, injury, loss, or damage whatsoever caused to any person, or to the property of any person alleged to have occurred in or about the Grantor Parcel caused by Grantee, or its agents, Contractors, or its employees, in connection with the construction or performance of the Construction Work contemplated by this Agreement, excluding however the gross negligence or willful misconduct of the Grantor.

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Grantor shall have no responsibility or liability for any loss of or damage to any property of Grantee or any of its Contractors which is not caused by Grantor, its agents, employees or contractors. Grantor shall not be responsible or liable to Grantee or to anyone claiming by, through, or under Grantee including without limitation, Grantee's directors, officers, employees, agents, invitees, licensees, and Contractors for any loss or damage that may be occasioned by or through the acts or omissions of any person or occupant of the Grantor Parcel from any cause whatsoever which was not due to the action or inaction of Grantor its agents, employees or contractors. Grantee shall not do or permit anything to be done in or about the Easement Parcel or bring anything onto the Easement Parcel or keep anything on the Easement Parcel which shall increase the rate of insurance on the Easement Parcel or any portion thereof.

## 8. Insurance.

(a) Grantee shall maintain, at its sole cost and expense, commercial general liability insurance and property damage insurance under policies issued by insurers of recognized responsibility approved by Grantor, with a combined single limit of not less than \$2,000,000.00 for bodily injury to, personal injury to or destruction of property (including the loss of use thereof) for any one occurrence. Such policies shall name as additional insureds, Grantor, its shareholders, officers, directors, members, agents, and employees, and any mortgagees (hereinafter collectively referred to as the "Grantor's Parties").

(b) Grantee shall require that its general contractor to maintain and furnish evidence thereof to Grantee and Grantor the insurance coverage set forth below and all such general contractor's insurance shall provide that the same cannot be cancelled, reduced or amended without at least ten (10) days prior written notice to Grantor. Grantor, the Grantor's Parties and Grantee shall be named as additional insureds therein as their respective interests may appear:

- (1) Workers' Compensation Insurance providing statutory benefits and limits which shall fully comply with all state and federal requirements applying to this insurance in the state where the Grantor Parcel is located and Employer's Liability Insurance with Employer's Liability Per Accident & Per Disease no less than \$100,000.
- (2) Motor Vehicle Liability Insurance with coverage for all owned, non-owned, and hired vehicles with combined single limits per occurrence no less than \$1,000,000.
- (3) Commercial General Liability Insurance including, but not limited to, coverage for completed operations, contractual injury liabilities, with a cross-liability endorsement, and providing coverage for explosion, collapse, and underground hazards, with combined single limits no less than \$5,000,000 per occurrence, naming Grantee and Grantor as additional insureds.
- (4) Builder's Risk Insurance during the course of construction.

9. Liens. Grantee agrees that it will pay all contractors, subcontractors and materialmen (herein collectively referred to as the "Contractors") performing services or providing materials incident to the Construction Work in a timely manner so that no claims for mechanic's or materialmen's liens will be filed against the Grantor Parcel. If Grantor receives a notice of a claim to be filed or if a claim is filed against the Grantor Parcel as a result of Grantee's non-payment to any Contractor performing Construction Work, Grantor shall immediately forward such notice to Grantee. In the event such lien is not resolved or discharged within thirty (30) days of Grantee's receipt of such notice of lien then, unless Grantee is in the process of diligently contesting, in good faith, the merits of such claim, Grantor shall

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have the right upon the expiration of said thirty (30) day period, to pay the full amount of any such claim or lien directly to the claimant and Grantee shall reimburse Grantor for (i) the amount of such payment made and (ii) for any costs or expenses reasonably incurred in connection with such payment immediately upon written demand from Grantor together with interest at the rate of 8% which shall be due and owing from the date Grantor makes any payment on Grantee's behalf hereunder until the date Grantor is fully reimbursed by Grantee.

10. Non-Waiver. The failure in any one or more instances of a party to insist upon performance of any of the terms, covenants or conditions of this Agreement shall not be deemed to constitute a waiver of any right or privilege in this Agreement. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party.

11. Severability. The invalidity of any provision of this Agreement or portion of a provision shall not affect the validity of any other provision of this Agreement or the remaining portion of the applicable provision.

12. Applicable Law. This Agreement shall be governed and controlled as to validity, enforcement, interpretation, construction, effect and in all other respects by the internal laws of the State of Illinois applicable to contracts made in that state. The parties submit to any proper court of competent jurisdiction located in the State of Illinois that has jurisdiction over the Grantor Parcel, the Grantee Parcel and the Easement Parcel, in the event of any dispute arising between the parties hereunder.

13. Binding Effect. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns.

14. Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed, either by the parties hereto or by any third party, to create the relationship of principal and agent or create any partnership, joint venture or other association between Grantor and Grantee.

15. Consents. Whenever in this Agreement a party is or may be, called upon to give its consent or approval to any action, except as otherwise specifically provided herein, the consent or approval shall not be unreasonably withheld, conditioned or delayed.

16. Exhibits Incorporated. Each exhibit attached hereto and referred to in this Agreement is hereby incorporated by reference as though set forth in full where referred to (by letter or description) herein.

17. Counterparts. This Agreement may be executed in one or several counterparts, each of which shall be deemed an original, and all such counterparts shall be deemed one and the same Agreement.

18. Amendments. This Agreement may be amended or modified only by a written instrument executed by the parties hereto or their respective successors and assigns. Any amendments or alternative or supplementary provisions to this Agreement must be made in writing and duly executed by an authorized representative or agent of each of the parties hereto.

19. Restoration of the Temporary Construction Easement. In addition to other covenants set forth in this Agreement, Grantee agrees to restore the remainder of the Easement Parcel, at its sole cost and expense, due to any damages caused by Grantee during its use and the Construction Work on the Easement Parcel, to the same condition which existed prior to the commencement of this Agreement,

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including, but not limited to, the repaving of any existing asphalt in the Easement Parcel taking into consideration any improvement made to the Easement Parcel in accordance with the Plans. Grantee shall cause any trench made on the Easement Parcel to be properly refilled and shall cause the area disturbed under the Easement Parcel to be restored upon completion of Grantee's use and the Construction Work in the Easement Parcel.

20. Damages. Grantee covenants and agrees to compensate Grantor for any actual out-of-pocket damages incurred to the Grantor's Parcel caused by Grantee, its agents, employees or Contractors, in the exercise of any its rights, duties and obligations under this Agreement.

21. Failure/Breach of Performance. If there is a failure by Grantee or its Contractors, as the case may be, to perform, fulfill or observe any covenant contained within this Agreement, to be performed, fulfilled or observed by such party, continuing for fourteen (14) days, or in situations involving potential danger to the health or safety of persons in, on or about the Easement Parcel or substantial deterioration of the Grantor's Parcel, as the case may be, then after written notice, the Grantor, at its election, cure such failure or breach on behalf of the Grantee, or, in the alternative, Grantor may immediately terminate this Agreement and have the right to exercise any and all remedies available at law or in equity. Any amount which the Grantor shall expend for such purpose shall be paid to Grantor on demand, without contest, upon delivery of its invoice.

22. Notices. All notices shall be in writing and shall be sent by certified mail, return receipt requested, to the following addresses, and shall be deemed given three (3) business days after the date same is deposited in the U.S. Mail, at the addresses set forth above. A copy of any notice to Grantor shall also be sent and addressed to Sears Roebuck and Co., 3333 Beverly Road, Hoffman Estates, Illinois, 60179, Attention: Assistant General Counsel-Real Estate Law Department.

23. Covenants Run with the Land. The covenants given and the easements granted pursuant to this Agreement shall be deemed to be covenants running with the land shall be binding upon the successors in interest, assigns and devisees of the parties hereto.

24. Prevailing Party Attorney's Fees. In the event either party commences an action to enforce or interpret this Agreement, the prevailing party in such action shall be entitled to recover its attorneys' fees and costs incurred therein.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date hereinabove set forth.

**GRANTEE:**

**REALTY AMERICA GROUP (LINCOLN MALL), LP**, a Texas limited partnership

By: RAG -- Lincoln GenPar, LLC, a Texas limited liability company, its general partner

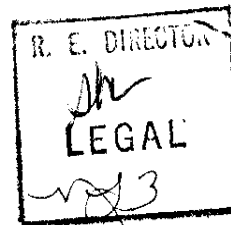
By: *River E. Castleman*  
Name: River E. Castleman  
Its: Member

**GRANTOR:**

**SEARS, ROEBUCK AND CO.**, a New York Corporation

By: *James B. Terrell*

Name: JAMES B. TERRELL, DIRECTOR  
Title: REAL ESTATE OPERATIONS



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State of IL )  
 ) ss  
County of Cook )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Rites E. Castleman, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act as a member of RAG – Lincoln GenPar, LLC, a Texas limited liability company, the general partner of Realty America Group (Lincoln Mall), LP, a Texas limited partnership for the uses and purposes therein set forth. Given under my hand and official seal, this 21st day of October 2005.

(Seal)

Susann Fangman  
Notary Public

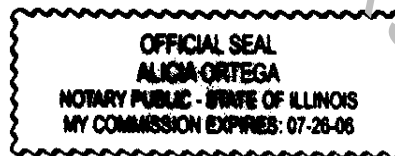
State of Illinois )  
 ) ss  
County of Cook )



I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that J.P. Terrell, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act as the Director of Sears, Roebuck and Co., a New York corporation for the uses and purposes therein set forth. Given under my hand and official seal, this 31st day of October 2005.

(Seal)

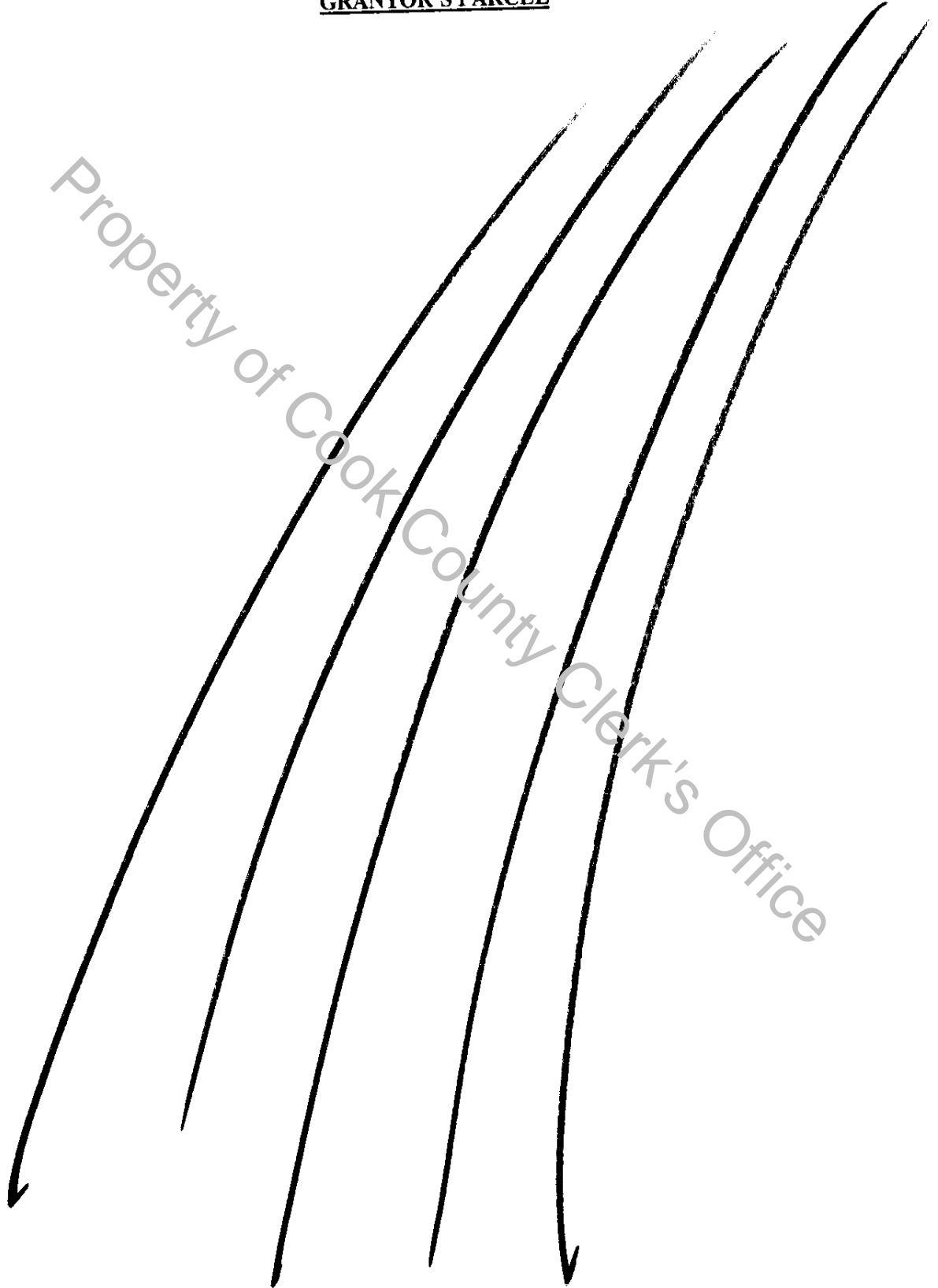
Alicia Ortega  
Notary Public



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EXHIBIT A

GRANTOR'S PARCEL



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## LEGAL DESCRIPTION OF SEARS OWNERSHIP

LOT 5 IN LINCOLN MALL, A SUBDIVISION OF PART OF THE SOUTHWEST QUARTER OF SECTION 22, TOWNSHIP 35 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORDED MARCH 20, 1972 AS DOCUMENT 21840371 IN COOK COUNTY, ILLINOIS.

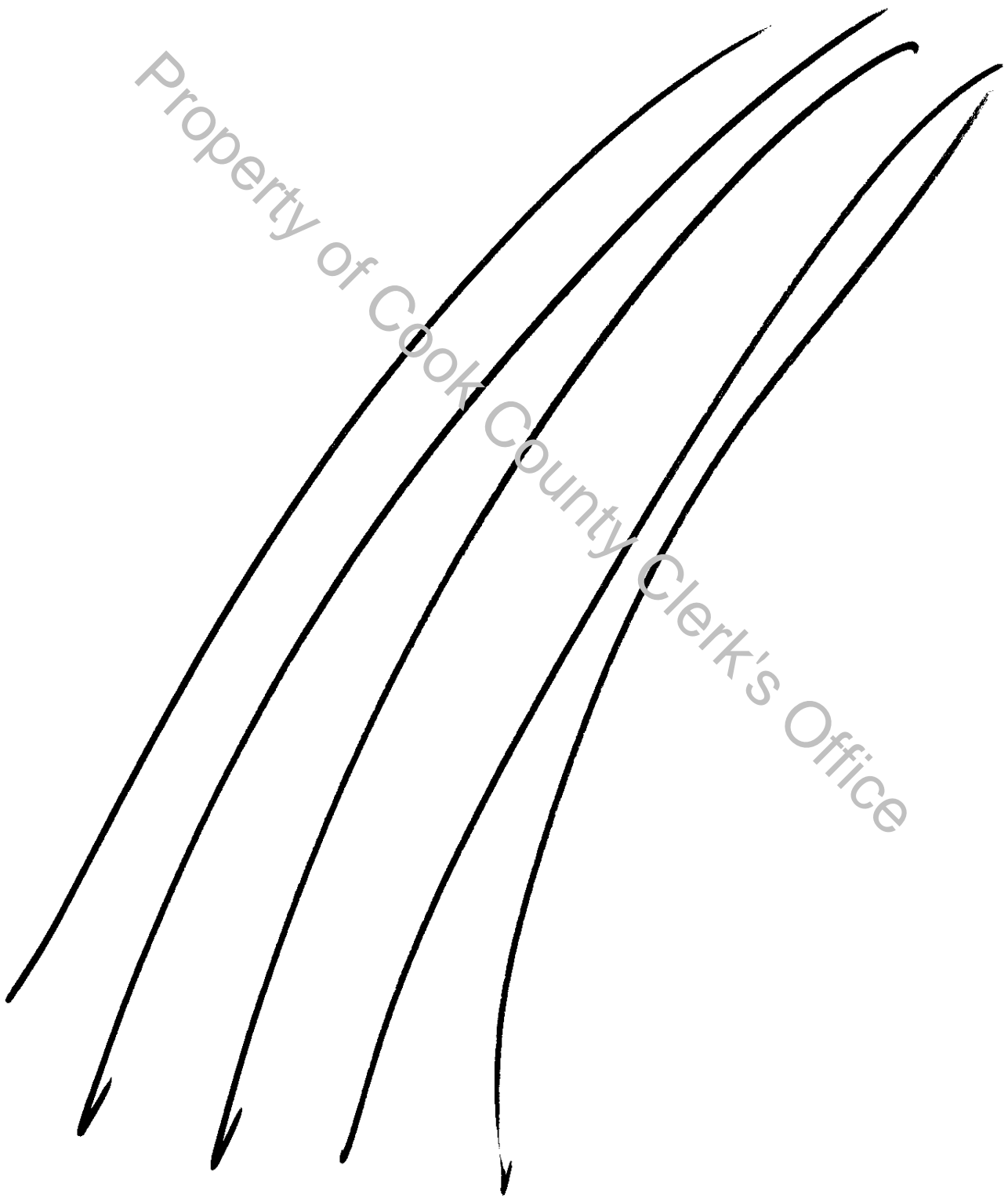
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EXHIBIT B

GRANTEE'S PARCEL

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## LEGAL DESCRIPTION OF MALL OWNERSHIP

LOTS 1, 3 AND 4 IN LINCOLN MALL, A SUBDIVISION OF PART OF THE  
SOUTHWEST QUARTER OF SECTION 22, TOWNSHIP 35 NORTH, RANGE 13  
EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT  
THEREOF RECORDED MARCH 20, 1972 AS DOCUMENT 21840371 IN COOK  
COUNTY, ILLINOIS.

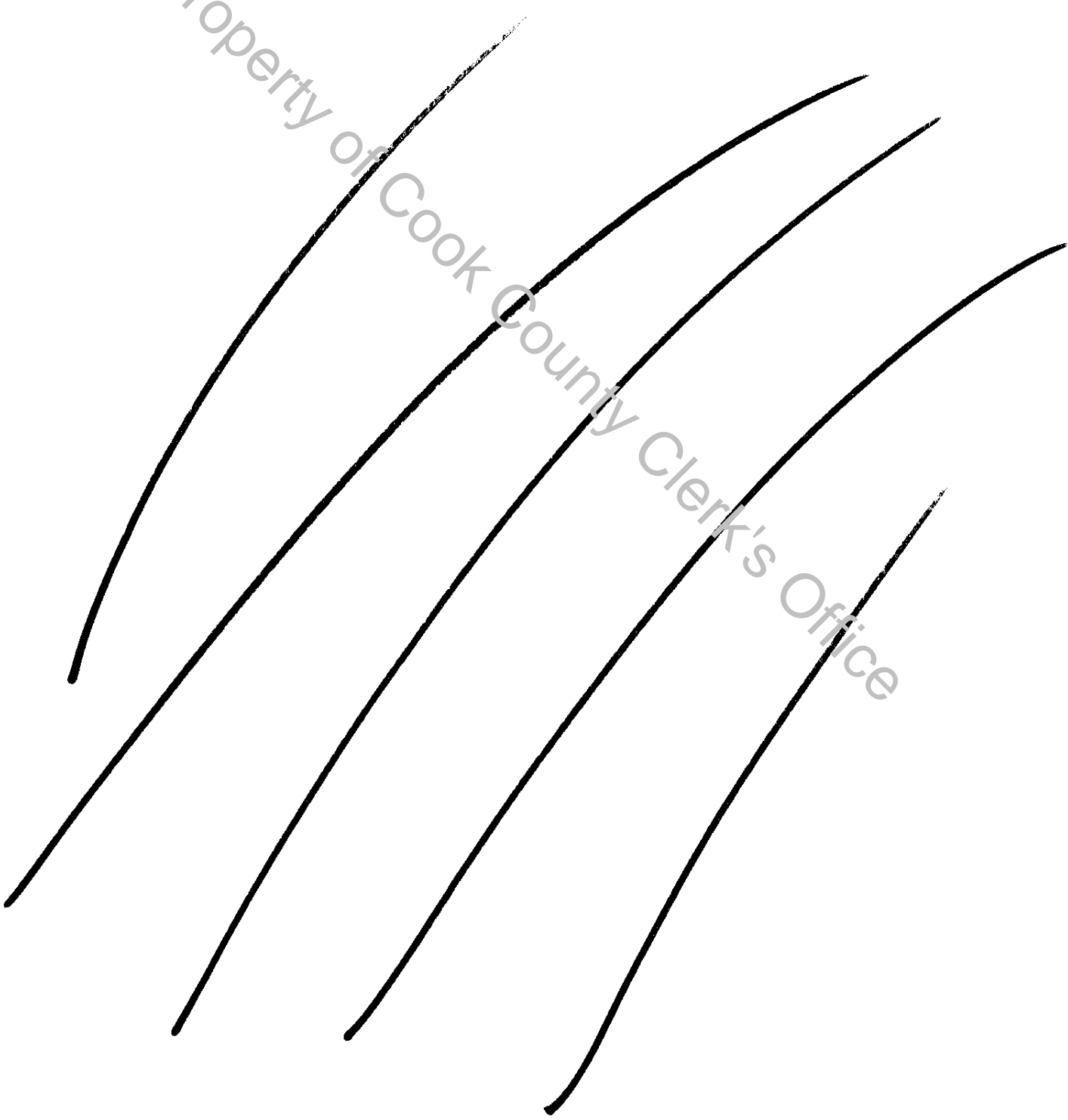
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EXHIBIT C

TEMPORARY EASEMENT PARCEL

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## LEGAL DESCRIPTION OF SEARS CONSTRUCTION EASEMENT

A PARCEL OF LAND BEING A PART OF LOT 5 IN LINCOLN MALL, A SUBDIVISION OF PART OF THE SOUTHWEST QUARTER OF SECTION 22, TOWNSHIP 35 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORDED MARCH 20, 1972 AS DOCUMENT 21840371 IN COOK COUNTY, ILLINOIS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 22; THENCE NORTH 00 DEGREES 40 MINUTES 20 SECONDS WEST (BASIS OF BEARINGS BEING THE SOUTH RIGHT OF WAY LINE OF LINCOLN HIGHWAY BEARING NORTH 89 DEGREES 43 MINUTES 15 SECONDS EAST), 604.00 FEET ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 22; THENCE NORTH 89 DEGREES 34 MINUTES 37 SECONDS EAST, 70.00 FEET TO THE EAST RIGHT OF WAY LINE OF CICERO AVENUE AND THE PLACE OF BEGINNING; THENCE ON THE FOLLOWING TWELVE (12) COURSES ON THE BOUNDARY LINES OF SAID LOT 5; (1) NORTH 89 DEGREES 34 MINUTES 37 SECONDS EAST, 452.72 FEET, (2) NORTH 59 DEGREES 34 MINUTES 37 SECONDS EAST, 127.35 FEET, (3) SOUTHEASTERLY 13.92 FEET ALONG AN ARC OF A NON-TANGENT CURVE, CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 25.00 FEET, HAVING A CHORD WHICH BEARS SOUTH 57 DEGREES 19 MINUTES 01 SECONDS EAST, FOR A DISTANCE OF 13.74 FEET TO THE BEGINNING OF A COMPOUND CURVE, (4) SOUTHEASTERLY 49.91 FEET ALONG AN ARC OF A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 372.00 FEET, HAVING A CHORD WHICH BEARS SOUTH 45 DEGREES 12 MINUTES 47 SECONDS EAST FOR A DISTANCE OF 49.88 FEET, (5) SOUTH 49 DEGREES 03 MINUTES 24 SECONDS EAST, 502.27 FEET, (6) NORTH 34 DEGREES 18 MINUTES 22 SECONDS EAST, 489.33 FEET, (7) NORTH 10 DEGREES 41 MINUTES 39 SECONDS WEST, 180.00 FEET, (8) NORTH 49 DEGREES 18 MINUTES 23 SECONDS EAST, 31.18 FEET, (9) NORTH 10 DEGREES 41 MINUTES 39 SECONDS WEST, 130.48 FEET, (10) NORTH 55 DEGREES 41 MINUTES 38 SECONDS WEST, 21.86 FEET, (11) NORTH 10 DEGREES 41 MINUTES 36 SECONDS WEST, 19.58 FEET; THENCE ON THE FOLLOWING TEN (10) COURSES THROUGH SAID LOT 5; (1) NORTH 55 DEGREES 40 MINUTES 32 SECONDS WEST, 0.11 FEET, (2) SOUTH 34 DEGREES 19 MINUTES 28 SECONDS WEST, 258.73 FEET, (3) NORTH 55 DEGREES 40 MINUTES 32 SECONDS WEST, 177.46 FEET, (4) SOUTH 34 DEGREES 16 MINUTES 14 SECONDS WEST, 38.36 FEET, (5) NORTH 55 DEGREES 40 MINUTES 32 SECONDS WEST, 14.71 FEET, (6) SOUTH 34 DEGREES 04 MINUTES 45 SECONDS WEST, 57.34 FEET, (7) NORTH 55 DEGREES 55 MINUTES 15 SECONDS WEST, 122.97 FEET, (8) SOUTH 34 DEGREES 04 MINUTES 45 SECONDS WEST, 129.40 FEET, (9) SOUTH 79 DEGREES 35 MINUTES 27 SECONDS WEST, 195.28 FEET TO THE EAST LINE OF LOT 1 IN THE RESUBDIVISION OF LOT 9 IN SAID LINCOLN MALL SUBDIVISION;

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THENCE ON THE FOLLOWING FOUR (4) COURSES ALONG THE BOUNDARY LINES OF SAID LOT 1; (1) SOUTH 30 DEGREES 41 MINUTES 32 SECONDS EAST, 77.34 FEET, (2) SOUTHEASTERLY 9.97 FEET ALONG AN ARC OF A CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 25.00 FEET, HAVING A CHORD WHICH BEARS SOUTH 19 DEGREES 15 MINUTES 52 SECONDS EAST FOR A DISTANCE OF 9.91 FEET, (3) THENCE SOUTH 59 DEGREES 34 MINUTES 37 SECONDS WEST, 107.11 FEET, (4) SOUTH 89 DEGREES 34 MINUTES 37 SECONDS WEST, 435.32 FEET TO THE EAST RIGHT OF WAY LINE OF CICERO AVENUE; THENCE SOUTH 00 DEGREES 40 MINUTES 20 SECONDS EAST, 66.00 FEET ALONG THE EAST RIGHT OF WAY LINE OF CICERO AVENUE TO THE POINT OF BEGINNING. CONTAINING: 7.61 ACRES, MORE OR LESS.

PIN's 31-22-300-022, 027, 021, 037, 041, 055

Address: 208 Lincoln Mall, Matteson, IL

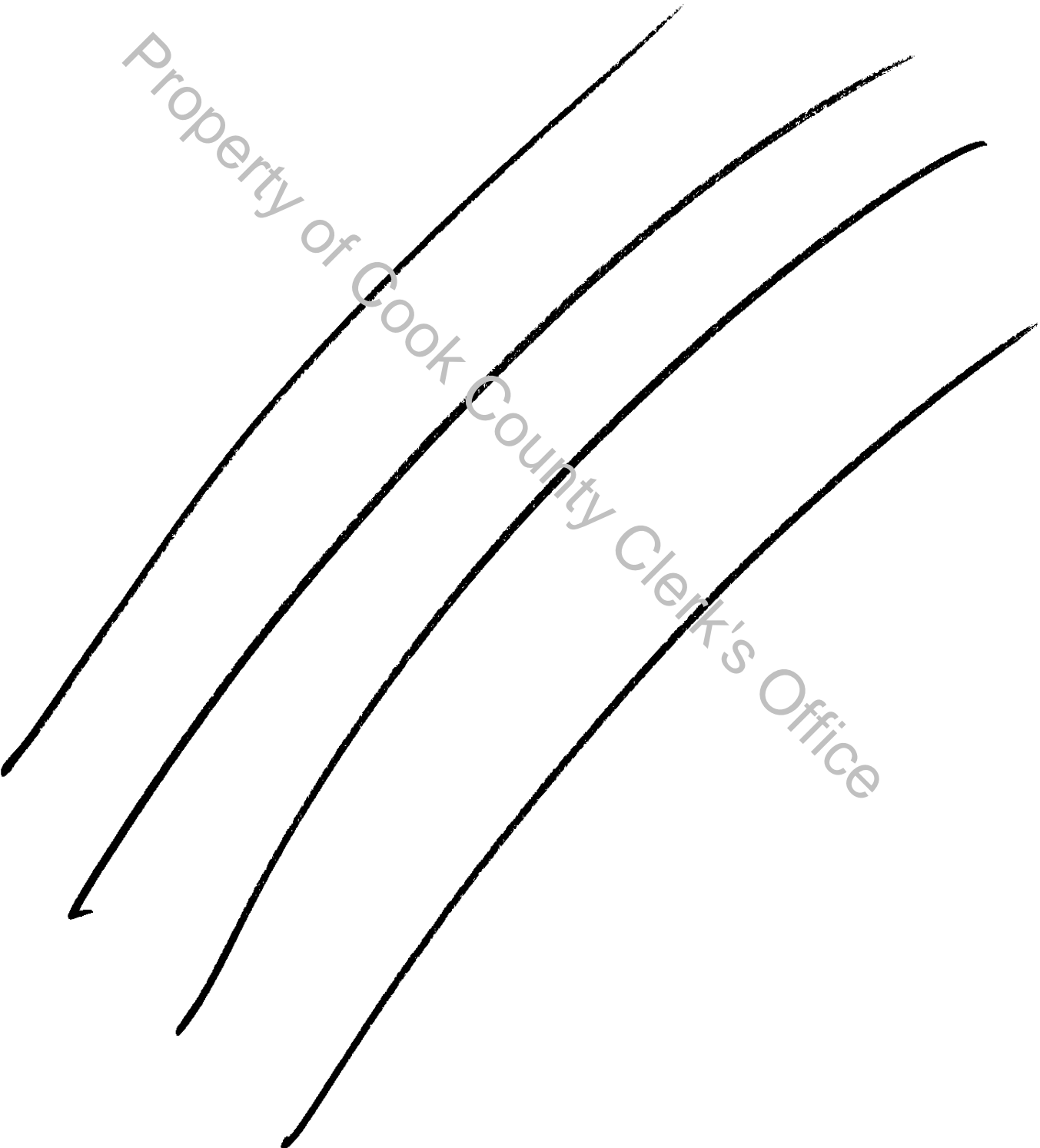
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## EXHIBIT C-1

### DEPICTION OF TEMPORARY EASEMENT PARCEL

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EXHIBIT D

PHASING PLAN

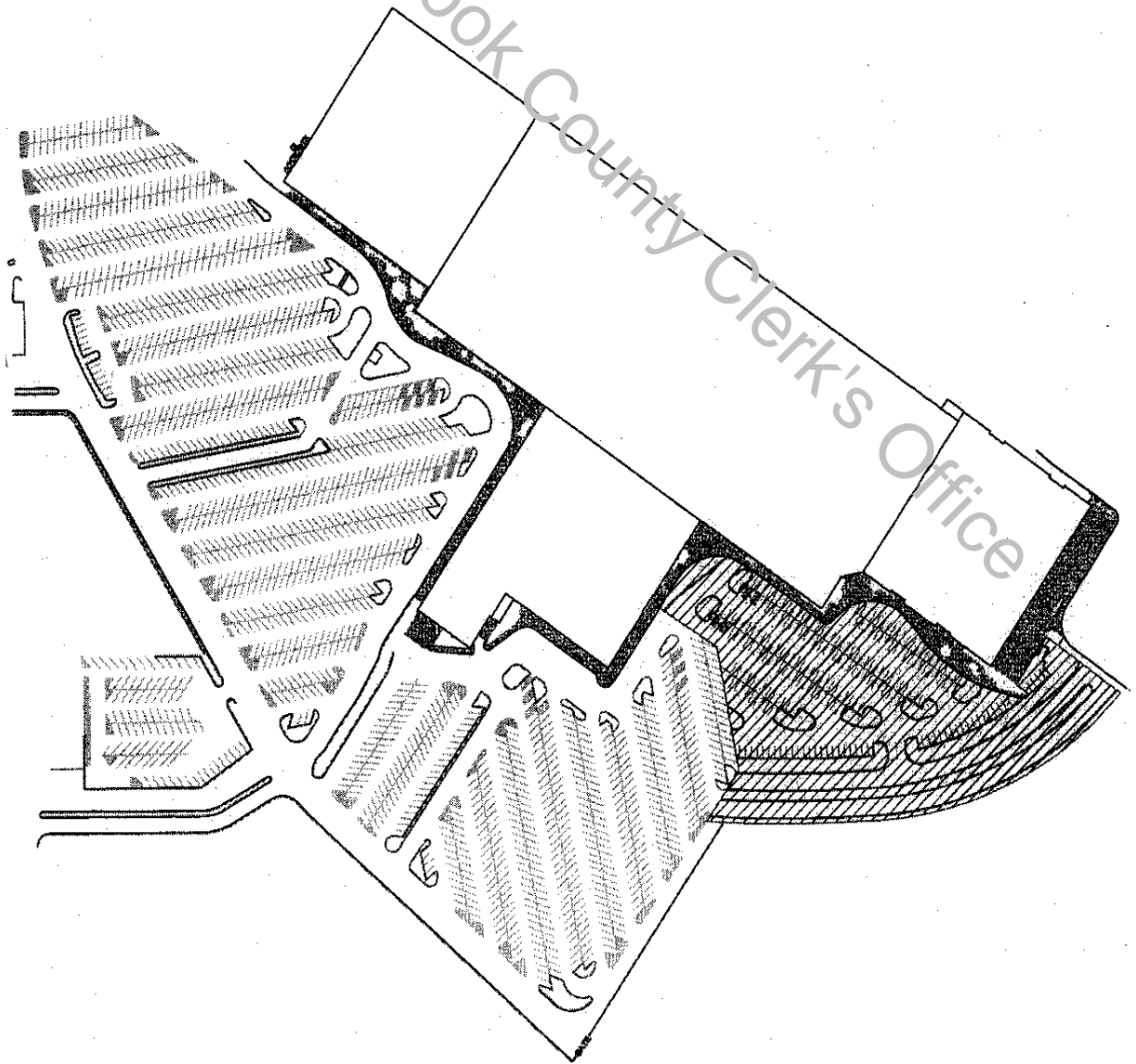
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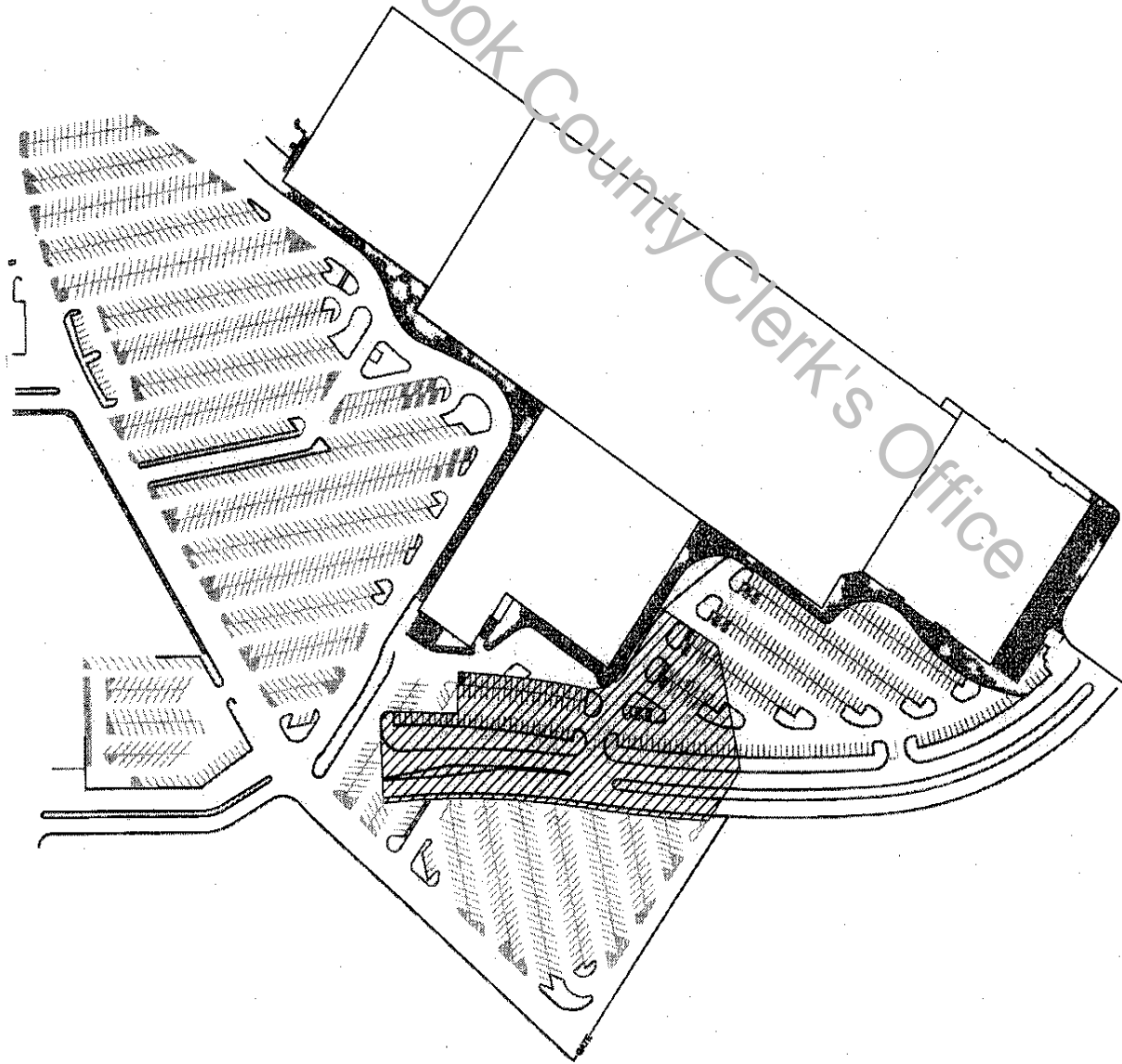
Lincoln Mall Redevelopment  
Phasing Plan  
Phase 1



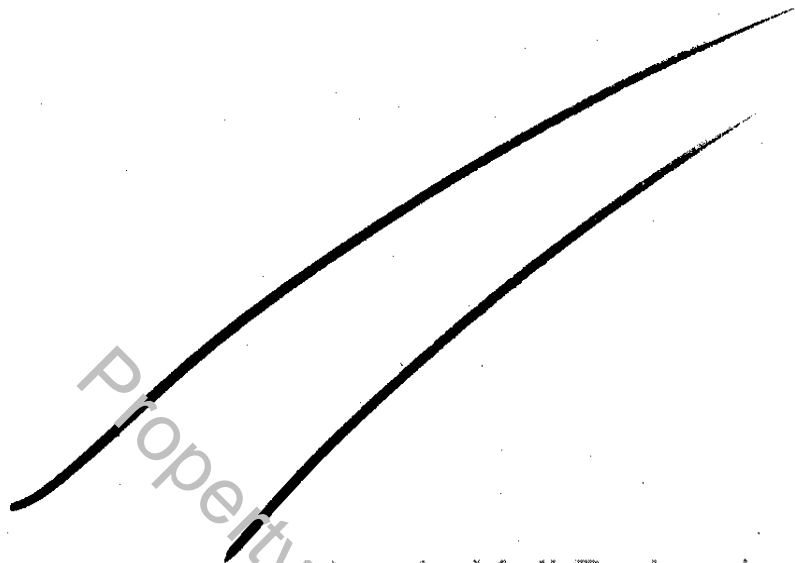
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## Lincoln Mall Redevelopment Phasing Plan Phase 2

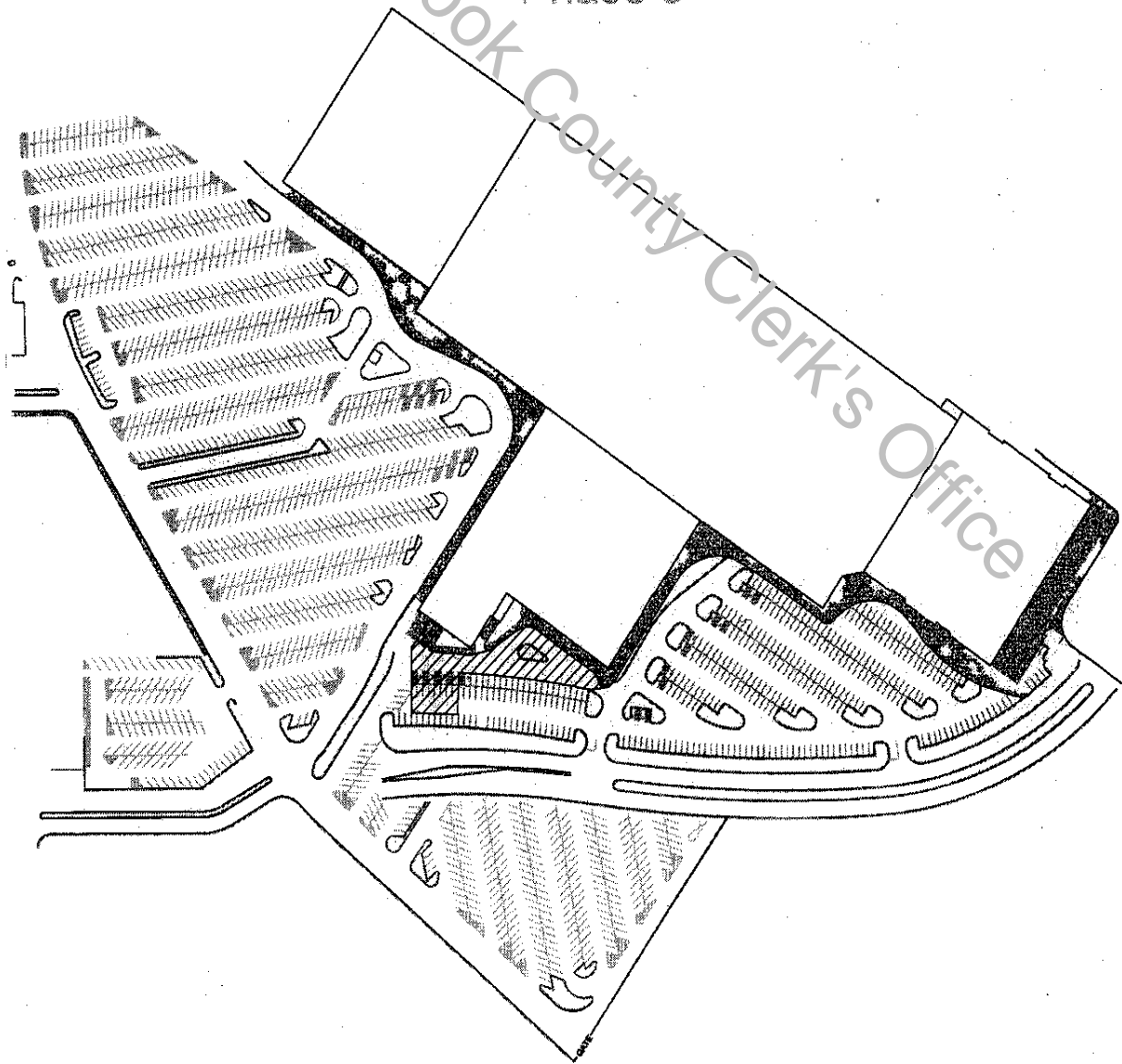


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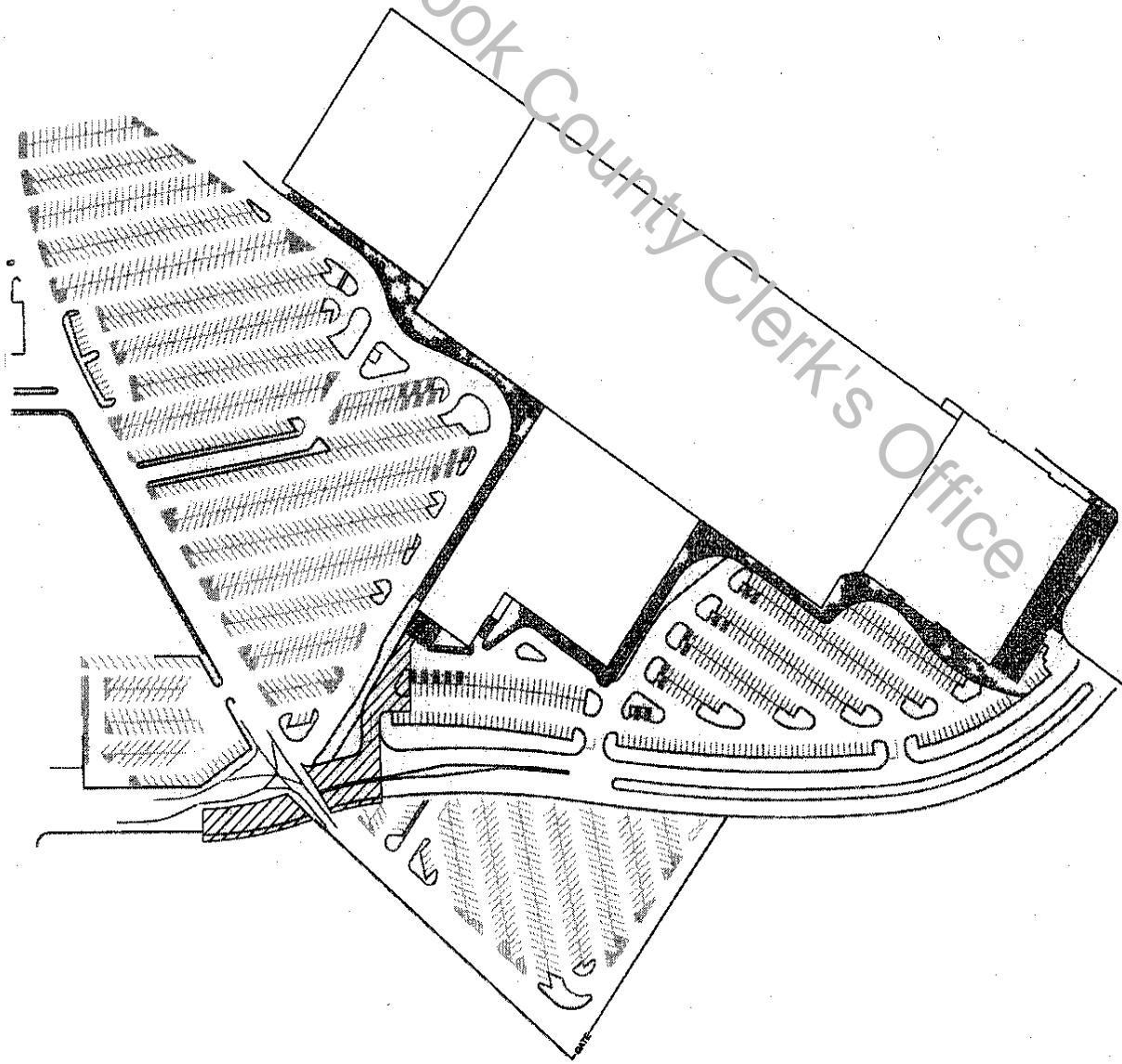
## Lincoln Mall Redevelopment Phasing Plan Phase 3



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## Lincoln Mall Redevelopment Phasing Plan Phase 4



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## Lincoln Mall Redevelopment Phasing Plan Phase 5

