

INDENTURE OF AGREEMENT

WASHINGTON COUNTY TREASURER
TAX CERTIFICATE NO. 2099

THIS INDENTURE, made and entered into this 29TH day of DECEMBER, 1967, by and between JACOBSON STORES REALTY COMPANY, a Michigan corporation, with offices at 1200 North West Avenue, Jackson, Michigan, Grantor and Party of the First Part, hereinafter referred to as "JACOBSONS," and the ANN ARBOR BUILDING AUTHORITY, a municipal corporation of the State of Michigan, City Hall, Ann Arbor, Michigan, Grantee and Party of the Second Part, hereinafter referred to as "AUTHORITY,"

WITNESSETH:

(i) WHEREAS, the AUTHORITY has been incorporated and is duly authorized pursuant to the provisions of Act 31, Public Acts of Michigan, 1948, (First Extra Session), as amended, to acquire property by purchase, construction, lease, gift, devise or condemnation for the purpose of providing the necessary site or sites for automobile parking lots or structures, and to finance the construction of the same by the issuance of Revenue Bonds, and

(ii) WHEREAS, the AUTHORITY, pursuant to the authorization granted to it by Act 31, Public Acts of Michigan, 1948 (First Extra Session) as amended, and its Articles of Incorporation, proposes to construct, equip and maintain an automobile parking structure for the use of the City of Ann Arbor, which will provide parking for 300 cars, said parking garage to be located over Maynard Street and Lots 6 and 7 and the Southerly fourteen (14) feet of Lot 5 of Block 3 South, Range 9 East of Ann Arbor Land Company's Addition to the City of Ann Arbor, as in this agreement defined, where said parking garage will occupy the air

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WASHINGTON COUNTY
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JACOBSON STORES REALTY
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(iii) WHEREAS, the AUTHORITY proposes to construct said parking garage in accordance with the plans and specifications prepared by O'Dell, Hewlett & Luckenbach, Inc., Architects of Birmingham, Michigan, Job No. 66-78, which plans and specifications are dated July 12, 1967 and consist of structural plans numbered pages 1 through 15 and pages S-1 through S-6; electrical plans numbered E-1 through E-14, and mechanical plans numbered M-1 through M-8 together with accompanying specifications, all of which are incorporated in this agreement by reference; and

(iv) WHEREAS, such parking facilities are urgently needed due to the dense concentration of retail shopping and high rise residential apartment uses, and the City of Ann Arbor (by and through the AUTHORITY) would not otherwise be able to acquire as economically the necessary land surface site in the location proposed because of high land costs; and

(v) WHEREAS, JACOBSONS is the Owner of Lot 6 and 7 and the southerly fourteen (14) feet of Lot 5 of Block 3 South of Range 9 East of said Ann Arbor Land Company's Addition, where it proposes to construct underneath and subadjacent to the parking garage a Building occupying a basement and also two stories and partial third story above surface level, but is willing to allow the AUTHORITY to acquire the necessary space above such Building and the land and rights in land for the support of such elevated parking garage as designed by O'Dell, Hewlett and Luckenbach, Inc., Job No. 66-78, for the exclusive purpose of operating and maintaining such parking garage, for a nominal legal consideration and the reimbursement of certain increased fixed costs by reason of the location and construction of said parking garage over the land occupied by said Building, and

(vi) WHEREAS, JACOBSONS conveys herein to the AUTHORITY the necessary land, easements and rights in land for the support of

of support for the Building, upon condition that the AUTHORITY shall construct, use and maintain upon and within the granted premises such Parking Garage in accordance with said plans and specifications and this Agreement; and

(vii) WHEREAS, JACOBSONS and the AUTHORITY shall each contract for and pay the construction costs attributable to the facility to be built and occupied by them respectively,

1. NOW, THEREFORE, For the sum of ONE DOLLAR (\$1.00) paid by the Grantee, Ann Arbor Building Authority, (AUTHORITY), receipt of which is hereby acknowledged, and other good and valuable consideration/ but for a total consideration not over \$100.00 and the covenants herein contained, the Grantor, JACOBSON STORES REALTY COMPANY, a Michigan corporation, (JACOBSONS), has and by these presents does hereby grant, bargain and sell, release, convey and warrant to the Grantee, ANN ARBOR BUILDING AUTHORITY, a municipal corporation of the State of Michigan, (AUTHORITY), the following described lands, tenements, hereditaments and rights therein and appertaining thereto, located and situated in the City of Ann Arbor, County of Washtenaw and State of Michigan, to-wit:

(A) All that part of Lots 6 and 7 and the southerly 14 feet of Lot 5 of Block 3 South, Range 9 East, Ann Arbor Land Company's Addition to the City of Ann Arbor, Washtenaw County, Michigan, from and beneath the top elevation of each area shown on the attached foundation plan as footings, the location, dimension and elevation of each being specified thereon; said attached foundation plan being identified as Maynard Carport Addition by O'Dell, Hewlett and Luckenbach, Inc., Job No. 66-78, Sheet No. S-101-A, dated September 12, 1967.

(B) ALSO the spaces for columns each of dimensions and a height as indicated on said foundation plan and located at the intersection of coordinates R, S, T, V, W, X, Y, Z

each column adjacent thereto along both north-south and east-west coordinates of said foundation plan and as the planes thus created are extended to the respective boundaries of that parcel herein described as the Southerly fourteen (14) feet of Lot 5 and Lots 6 and 7 of Block 3 South, Range 9 East.

(D) ALSO all that portion of Lots 5 and 6 shown on the northeast corner of said foundation plan as the elevator-stairway tower and bounded by coordinates X and Z on the East and West and 1 and 3a on the North and South, respectively, premises described in Paragraphs A, B, C and D all being a part of said Lots 6 and 7 and the south fourteen (14) feet of Lot 5 of Block 3 South, Range 9 East, Ann Arbor Land Company's Addition to the City of Ann Arbor.

(E) In the event that the footings and columns as constructed vary in location or dimensions from the provisions of the foundation plan attached hereto and made a part of this conveyance, then JACOBSONS shall be deemed to have conveyed the areas on which said footings actually rest and in which said columns are actually constructed and any area conveyed herein but not corresponding to said actual construction shall be deemed not to have been conveyed to the AUTHORITY, and if conveyed then shall be deemed to have been reconveyed to JACOBSONS by this agreement. A revised foundation plan or description based upon survey of the premises after construction of footings and columns shall, upon request of either party, be prepared at joint expense and, as approved, recorded to supersede and amend the description and foundation plan as existing on the date of this indenture;

(F) EXPRESSLY RESERVING to the Grantor and further granting to the Grantee, their respective successors and assigns forever, reciprocal, perpetual and continuous easements and rights of support for the Building and the Parking Garage, their respective foundations, footings, columns, walls, beams, floors, slabs and ceilings each as affixed to and integral with the structures of the other.

(G) AND FURTHER EXPRESSLY RESERVING to the Grantor and Grantee, and their successors and assigns, the right at any time to make any changes or alterations to said Building or Parking Garage not inconsistent with the respective reservations, grants and covenants herein, including such structural alterations or repairs as might be necessary in the event of a delay or abandonment of construction of JACOBSONS' Building. Nothing in this Indenture shall prevent JACOBSONS from making any lawful use of JACOBSONS' Building that is not inconsistent with the operation of

2. To have and to hold to the said Grantee (AUTHORITY), its successors and assigns, forever, the foregoing lands, easements and right in lands, in fee simple as herein specified but upon the condition, anything herein to the contrary notwithstanding, that whenever the AUTHORITY, its successors or assigns, cease to use the granted premises, the air space and the facility constructed thereon and therein for the purpose of operating a structure for the parking of transportation devices owned by the public in the manner and at rates then customary for the operation of publicly owned structures of similar type and purpose, the granted premises and all hereditaments and appurtenances thereto appertaining shall revert to the Grantor, its successors and assigns.

3. And further the Grantor, for itself, its successors and assigns, does hereby covenant with and for the benefit of the Grantee, its successors and assigns, that it, the Grantor, is seized of said premises in fee simple and has good right to convey the same and that the premises are free from all incumbrances whatever, and that the Grantor, its successors and assigns, will warrant and defend the title to said premises.

4. Both AUTHORITY and JACOBSONS covenant herein that they are duly authorized and have the power to enter into and perform the terms of this Indenture, that the execution and performance thereof have been duly authorized by all necessary legal action of the AUTHORITY and JACOBSONS, and that the agreement is valid and binding upon both parties in accordance with its terms.

5. Further, for the additional sum of One Dollar (\$1.00) paid by the Grantee, Ann Arbor Building Authority, to Jacobson Stores Realty Company, receipt of which is hereby acknowledged, together with other good and valuable consideration and the covenants contained, Jacobson Stores Realty Company, a Michigan

of way known as Maynard Street adjacent to Lots 6 and 7 and the southerly 14 feet of Lot 5 of Block 3 South, Range 9 East, Ann Arbor Land Company's Addition to the City of Ann Arbor, Washtenaw County, Michigan, reserving all surface rights but granting any interest in the air above such surface to be occupied by said parking garage and bridge carport structure, all being limited to that portion adjacent to said Lots 6, 7 and the southerly 14 feet of Lot 5 of Block 3 South, Range 9 East.

6. And further, the Grantor and Grantee, each for itself, its successors and assigns, with respect to said estates granted and retained, and as real covenants running with the title to said estates does hereby covenant and agree as follows:

(A) Entry and Possession

(1) The AUTHORITY shall have the right to enter upon and within the granted premises, and the premises retained by JACOBSONS to construct, use and maintain thereon and therein a Parking Garage and the necessary reinforced concrete foundations, footings, columns, beams and appurtenant structures for the continuous support of the Parking Garage above JACOBSONS' Building, which said foundations, footings, columns and supporting structure shall be constructed by the AUTHORITY in accordance with the plans and specifications therefor prepared by O'Dell, Hewlett and Luckenbach, Inc., Job No. 66-78, and of sufficient size, strength and design capacity to support the Building to be constructed by JACOBSONS in accordance with the plans and specifications prepared by O'Dell, Hewlett and Luckenbach, Inc., which plans the AUTHORITY and JACOBSONS have examined and approved.

(2) JACOBSONS shall have the right to enter upon the granted premises and during the course of construction by the AUTHORITY or at any other time, to attach, affix, construct integral with and otherwise use the foundations, footings, columns and

within the granted premises for the continuous and permanent support of JACOBSONS' Building, and its floors, slabs, ceilings, walls, roofs and equipment, which said foundations, footings, columns and supporting structure shall be constructed by JACOBSONS in accordance with the plans and specifications therefor prepared by O'Dell, Hewlett and Luckenbach, Job No. 66-78, and of sufficient size, strength and design capacity to support the Parking Garage to be constructed by the AUTHORITY in accordance with the plans and specifications prepared by O'Dell, Hewlett and Luckenbach, Inc., which plans JACOBSONS and the AUTHORITY have examined and approved.

(3) Irrespective of the separate ownership by the AUTHORITY of the super adjacent air space above JACOBSONS' Building, it shall not be construed by virtue of the grant herein, by the terms and conditions of this Agreement, or by implication of necessity or convenience that the AUTHORITY shall have the right of vehicle access to the defined air space and the Parking Garage located therein through any part of JACOBSONS' Building or subadjacent land of JACOBSONS not conveyed to the AUTHORITY. Vehicle access to the Parking Garage to be constructed over the Building shall be entirely through the corresponding levels of the Bridge parking structure over Maynard Street and the public alley way with plans and specifications prepared by O'Dell, Hewlett and Luckenbach, Inc., Job No. 66-78, as approved by the parties hereto.

(B) Rents and Profits. The AUTHORITY shall have the exclusive right to all of the income, rents and profits whatever by way of operation, lease or otherwise, but subject to the limitation of operation herein contained, derived from the Parking Garage supported by the foundations, footings, columns and appurtenant structures erected by the AUTHORITY upon and within the

Building supported by said foundations, footings, columns and appurtenant structures erected upon and within the granted premises. Neither the AUTHORITY, its successors and assigns, nor JACOBSONS, its successors and assigns, shall ever be liable one to the other for the use and occupation of the granted premises or for the reasonable value thereof, regardless of any rule or statute now or hereafter in effect, and no action of account, for an accounting, or any action of law or in equity, or upon any common counts or general civil action or proceeding whatsoever shall be maintained by either party hereto, its successors and assigns, against the other, its successors and assigns, for the apportionment of or inquiry into the rents and profits derived by either party from the use and occupation of the granted premises, or any other premises to which the granted premises may be appurtenant. It is declared the intention of both parties to this Indenture that the purpose hereof is to convey lands, easements, rights in lands sufficient to secure to both parties, their successors and assigns, permanent and continuous reciprocal support rights in the premises, and that it is not for the purpose of acquiring concurrent estates for deriving rents and profits in fractional shares or otherwise.

(C) Transfers, Conveyances and Encumbrances. Both the AUTHORITY and JACOBSONS and their respective successors and assigns, shall have the right to sell and convey, mortgage, lease, sub-lease, and otherwise transfer and assign their respective estates as herein granted or retained, whether such estate be in gross or appurtenant, subject, of course, to all covenants and obligations arising hereunder, and to pledge the revenues derived therefrom, and the transferee or transferees thereof shall succeed to the same rights, duties, privileges, conditions and obligations as herein provided and imposed upon the AUTHORITY and JACOBSONS respectively in the first instance. Any transfer or conveyance

other municipal corporation which shall be created hereafter by the CITY OF ANN ARBOR, shall limit the use and operation of said Parking Garage to the manner then customary for the operation of publicly-owned structures of a similar type and purpose. Conveyance for any other use or purpose shall be subject to the approval of JACOBSONS, its successors or assigns.

(D) Repairs

(1) The AUTHORITY, at its own expense and without contribution from JACOBSONS, shall keep the foundations, footings, columns and appurtenant structures owned by the AUTHORITY in good condition and capable of continuously supporting the Parking Garage and the First, Second and Third level floor slabs, beams and other attached parts of JACOBSONS' Building.

(2) Whenever any such repair and restoration work shall be performed by the AUTHORITY on or to any structures owned by it but at a location within or adjacent to JACOBSONS' Building, the AUTHORITY shall further provide and erect within the Building, at its sole expense, such barricades, walls, temporary partitions, fences and other devices for the protection of the general public and of JACOBSONS' customers, business invitees, and employees in the store and near or around such work, as well as for the protection of JACOBSONS' Building and its contents, as may be necessary.

(3) Whenever any repairs or restoration work shall be performed by JACOBSONS on or to any structures owned by JACOBSONS at a location in or immediately adjacent to JACOBSONS' Building as herein provided to be constructed subadjacent to the AUTHORITY'S Parking Garage, JACOBSONS shall provide and erect such barricades, walls, temporary partitions, fences and other devices for the protection of the AUTHORITY, its successors or assigns, their

(4) The AUTHORITY shall further, at its own expense and without contribution from JACOBSONS, keep and maintain the super-adjacent Parking Garage, including but without limitation by reason of enumeration, the repair, refurbishing, remodeling or reconstructing of the roof, walls, decorative facade, floor slabs, wearing surfaces, elevator service and operating equipment, in good condition at the sole expense of the AUTHORITY, and JACOBSONS, as owner of the subadjacent Building, shall not be held or deemed liable for any portion thereof or to contribute ratably to the expenses thereby incurred except as hereinafter provided.

(5) The cost of maintenance of the weatherproofing and weatherproof membranes of the lowest level floor slab of the Parking Garage which also forms the roof of JACOBSONS' Building shall be pro-rated between the parties in the same proportions as provided for in the contracts for original construction of said weatherproofing and weatherproof membrane entered into by each of the parties hereto.

(6) In the event that the Parking Garage shall ever become unsafe or dangerous for continued use as a parking garage, the AUTHORITY shall at its own expense remove and demolish or may, at its option, rebuild the Parking Garage at its sole expense, all without damage to JACOBSONS' Building and without removal of the footings and columns supporting JACOBSONS' Building. In the event of such demolition and removal of the Parking Garage, without rebuilding, said footings and columns shall thereupon become the absolute property of JACOBSONS for the continued and permanent support of JACOBSONS' Building.

(7) The AUTHORITY and JACOBSONS each shall have the right, privilege and license (which shall be deemed appurtenant to its estate in the premises granted or retained) to enter upon

restorations and reconstruction of the roof, floors, ceilings, waterproofing membrane, walls, foundations, footings, columns and appurtenant supporting structures whenever required for the protection of such party's own structure; provided, however that each shall give to the other written notice at least thirty (30) days in advance, except in the case of emergency repairs, of the need for entry and its intention to enter the structure of the other party for such purposes unless the party whose structure is in need of repair for the protection of the other undertakes such work itself within the said thirty (30) days.

(8) Any repair, maintenance, restoration or reconstruction work performed by the AUTHORITY shall be subject at all times to, and performed in such manner as not to interfere unreasonably with the operation of the JACOBSONS' Building or JACOBSONS' continuous and permanent right to the support of the Building, its walls, floors, ceilings, beams, slabs, equipment and furnishings, and any and all temporary and substitute support columns and structures as may be required to provide and maintain such continuous support shall be constructed, installed and supplied at the sole expense and cost of the AUTHORITY.

(9) Any repair, restoration or reconstruction work performed by JACOBSONS shall be subject at all times to, and performed in such manner as not to interfere unreasonably with the operation of the Parking Garage or with the AUTHORITY'S continuous and permanent right to the support of the Parking Garage, its walls, floors, decks, beams, columns, slabs and equipment, and any and all temporary and substitute support columns and support structures as may be required to provide and maintain such continuous support shall be constructed, installed and supplied at.

for any damage and injury to person or property occasioned by the negligent operation and maintenance of the Parking Garage whether the negligence of the AUTHORITY, its lessees, invitees, operating agents or transferees; and shall be and remain liable absolutely to JACOBSONS for any damage to JACOBSONS' structure and the contents thereof occasioned by collapse of all or any portion of the AUTHORITY'S structure due to any alteration, modification, or failure to repair any portion thereof. JACOBSONS shall be and remain liable absolutely to the AUTHORITY for any damage to the AUTHORITY'S structure occasioned by collapse of all or any portion thereof due to any alteration, modification, or failure to repair the foundations, walls, floor slabs, or beams of JACOBSONS' Building supporting the Parking Garage.

(2) The AUTHORITY and JACOBSONS each agree to insure their respective structures for the full insurable value thereof for loss or destruction by fire and other risks commonly covered by extended coverage in some company or companies which shall be mutually satisfactory and further, that said policies shall be further endorsed to cover the other party as additional named insured as its interest may appear. Each party further agrees to cooperate in combined adjustment of any loss on the basis of the facts as they exist at the time of said loss. The AUTHORITY and JACOBSONS further agree to carry public liability insurance protecting each party as to personal injury with respect to each party's structure in an amount not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00), for any one person, and ONE MILLION DOLLARS (\$1,000,000.00) for any one accident, and for property damage in an amount not less than ONE HUNDRED THOUSAND DOLLARS (\$100,000.00), said policies likewise to name the other party as covered insured as its interest may appear. Such policies shall contain provision

expiration or modification of such policies. Each party shall pay all premiums for its insurance policies and furnish the other with certificates of such insurance and exhibit their receipts for premium payments. Each party covenants and agrees that it will fully comply with all of the terms, provisions and conditions of any insurance policies obtained pursuant to the provisions of this paragraph. If either party fails to obtain insurance in accordance with these provisions, then unless the CITY OF ANN ARBOR pledges its full faith and credit to self-insure any uninsured portion of such risks or purchase the required insurance coverages on behalf of or in place of the AUTHORITY, such insurance may be obtained and paid for by the non-defaulting party which shall then be reimbursed by the defaulting party upon demand. The AUTHORITY and JACOBSONS, their respective successors and assigns, each agree to indemnify the other party and hold said other party harmless from all suits, claims, loss, damages, obligations, or other liabilities arising out of claims of third parties occurring within or about their respective structures for acts of negligence, products liability, misconduct of employees, and any and all other claims arising in or about said structures or out of the use by their respective employees, or the general public, of said structures or the patronizing of any operations conducted therein. The restrictions against actions inter se shall not apply to the liability of one party to the other for injury, damage, destruction, waste or other impairment of support rights, foundations, footings, columns and appurtenant structures which liability shall remain as provided by law in accordance with the provisions of this Indenture.

upon whom such demand is made at the address set forth below
opposite the name of such party or at such address as such party
may notify the other in writing:

Jacobson Stores Realty Company
1200 North West Avenue
Jackson, Michigan 49202

Ann Arbor Building Authority
City Hall
Ann Arbor, Michigan 48108

7. Binding Effect. This Agreement shall be binding upon and
inure to the benefit of and be enforceable by the respective
successors and assigns of JACOBSONS and the AUTHORITY.

IN WITNESS WHEREOF the parties hereto have caused this Agree-
ment to be executed by their duly authorized officers pursuant to
appropriate corporate resolutions and their corporate seal to be
hereunto affixed as of the day and year first above written.

In Presence Of:

JACOBSON STORES REALTY COMPANY

Dorothy Colestock
DOROTHY COLESTOCK

By Nathan Rosenfeld PRESIDENT
NATHAN ROSENFELD

Sharon May
SHARON MAY

By Richard Z. Rosenfeld SECRETARY
RICHARD Z. ROSENFELD

Attest: Richard Z. Rosenfeld SECRETARY
RICHARD Z. ROSENFELD

In Presence Of:

ANN ARBOR BUILDING AUTHORITY

Guy C. Larson, Jr.
GUY CLARSON JR

By Fred Ulrich
Fred Ulrich, Chairman

Andrea J. Knopf
ANDREA J. KNOPF

By Elizabeth H. G. Brown
Elizabeth H. G. Brown, Secretary

(Seal)
Attest: Elizabeth H. G. Brown Secretary
ELIZABETH H. G. BROWN

STATE OF MICHIGAN)
)
COUNTY OF JACKSON) SS

On this 29th day of December A.D. 1967, before me personally appeared NATHAN ROSENFELD and RICHARD Z ROSENFELD, to me personally known, who being by me sworn, did each for himself say that they are respectively the President and Secretary of JACOBSON STORES REALTY COMPANY, the corporation named in and which executed the within instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors; and said officers acknowledged said instrument to be the free act and deed of said corporation.

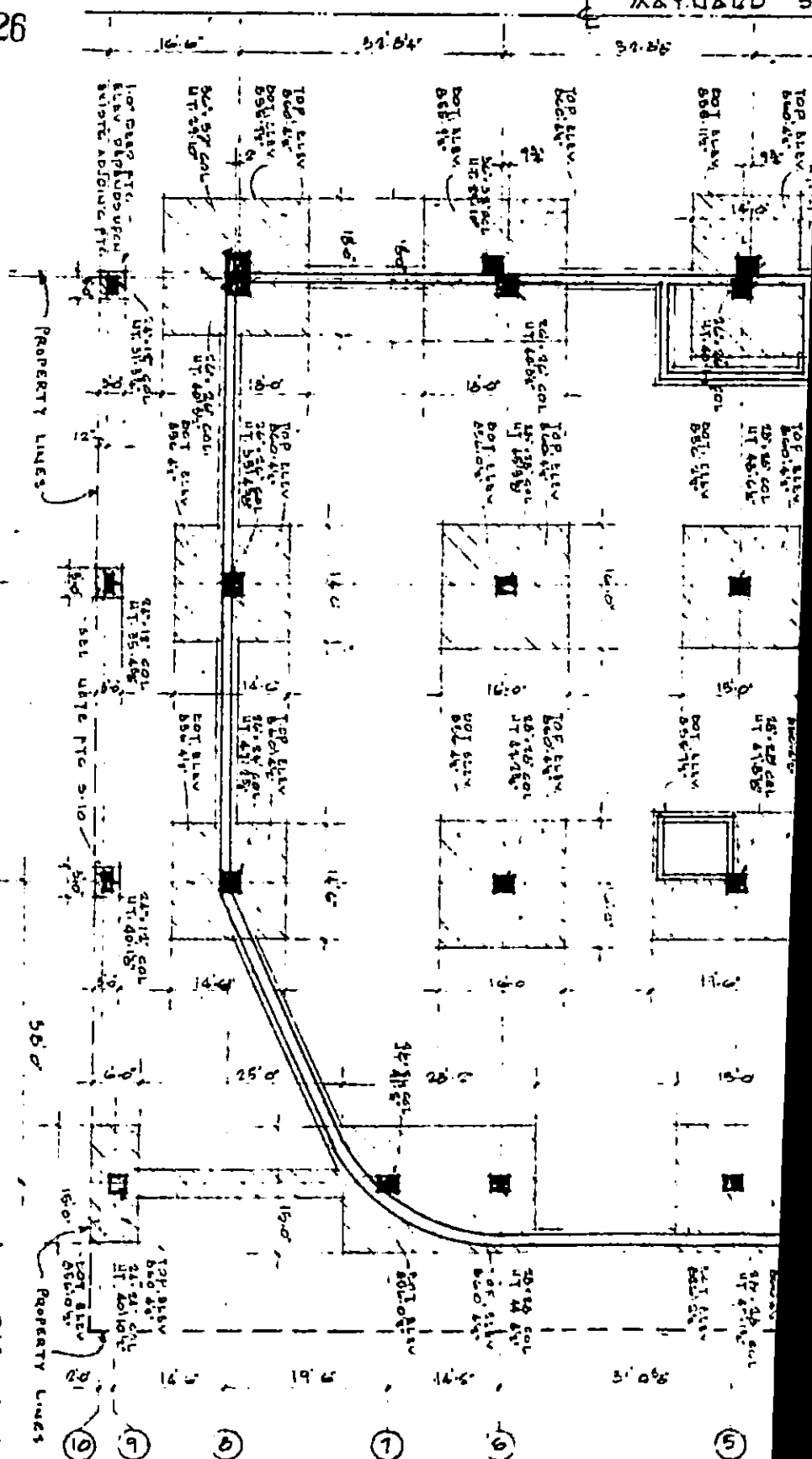
Dorothy Colestock
Notary Public

My commission expires: DOROTHY COLESTOCK
NOTARY PUBLIC, Jackson County, Mich.
My Commission Expires April 3, 1970

STATE OF MICHIGAN)
)
COUNTY OF WASHTENAW) SS

On this 25 day of January, 1968, appeared FRED ULRICH and ELIZABETH H.G. BROWN, to me personally known, who, being by me sworn did say that they are respectively the Chairman and Secretary of the Ann Arbor Building Authority, the second party named in and which executed the within instrument, and the seal affixed to said instrument is the corporate seal of the Ann Arbor Building Authority and that said instrument was signed and sealed in behalf of said corporation and the said FRED ULRICH and ELIZABETH H.G. BROWN acknowledged said instrument to be the free act and deed of the Authority.

MAYNARD 5



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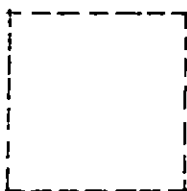
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FOOTINGS



COLUMNS



ELEVATOR STAIR TOWER

LEGAL DESCRIPTION:

SOUTH 14' OF LOT 5, LOTS 6 & 7 OF
BLOCK 3 SOUTH - RANGE 9' EAST OF
ANN ARBOR LAND COMPANY ADDITION
TO THE CITY OF ANN ARBOR.