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WHEN RECORDED RETURN TO:

Attn: Michael J. Merar
Seyfarth Shaw LLP
233 S. Wacker Drive
Suite 8000
Chicago, IL 60606

**NO EXCISE TAX
REQUIRED**

APR - 7 2023

BRIAN SULLIVAN, Snohomish County Treasurer
By BRIAN SULLIVAN *BJS*

DOCUMENT TITLE(S) Amendment to Declaration and Establishment of Protective
Covenants, Conditions and Restrictions and Grant of Easements

REFERENCE NUMBER(S) OF DOCUMENTS RELEASED: N/A

Reference Number of Document Amended: 201908280118

GRANTOR(S): PHTRE, I.P, a California limited partnership

GRANTEE(S): CHICK-FIL-A, INC., a Georgia corporation

TRUSTEE: N/A

ABBREVIATED LEGAL DESCRIPTION:

Lots 1 and 2 of the City of Marysville Binding Site Plan No. 17-023, as Recorded August 28,
2019 as Recording No. 201908285001, in Snohomish County, Washington

TAX PARCEL NUMBER(S):
30052100207600 and 30052100207700

WHEN RECORDED RETURN TO:

Attn: Michael J. Merar
Seyfarth Shaw LLP
233 S. Wacker Drive
Suite 8000
Chicago, IL 60606

DOCUMENT TITLE(S) Amendment to Declaration and Establishment of Protective Covenants, Conditions and Restrictions and Grant of Easements

REFERENCE NUMBER(S) OF DOCUMENTS RELEASED: N/A

GRANTOR(S): PHTRE, LP, a California limited partnership

GRANTEE(S): CHICK-FIL-A, INC., a Georgia corporation

TRUSTEE: N/A

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TAX PARCEL NUMBER(S):
30052100207600 and 30052100207700

After recording return to:
Seyfarth Shaw LLP
233 South Wacker Drive, Suite 8000
Chicago, Illinois 60606
Attn: Michael J. Merar

**AMENDMENT TO DECLARATION AND ESTABLISHMENT OF PROTECTIVE
COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS**

THIS AMENDMENT TO DECLARATION AND ESTABLISHMENT OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS (“Amendment”) is made between PHTRE, LP, a California limited partnership (“Declarant”), and CHICK-FIL-A, INC., a Georgia corporation (“CFA”). This Amendment shall be effective on the date on which it is fully executed by the last of Declarant and CFA (“Effective Date”).

RECITALS

A. WHEREAS, Marysville Covenant Group II LLC and EP Marysville II LLC as tenants in common (“Original Declarant”) entered into that certain Declaration and Establishment of Protective Covenants, Conditions and Restrictions and Grants of Easements dated August 20, 2019, said document being recorded in the Snohomish County, Washington Official Records (the “Records”) as Document #201908280118 (the “Declaration”), in which certain restrictions were established and placed upon two tracts of land referred to in said Declaration as “Lot 1” and “Lot 2” and which are more specifically described in the Declaration.

B. WHEREAS, Declarant, as successor to the Original Declarant, is the owner of Lot 1.

C. WHEREAS, CFA is the ground lessee of Lot 2 and, pursuant to Section 1.18 of the Declaration, is designated as the Owner of Lot 2 during such time as CFA is entitled to possession of Lot 2 or any portion thereof under CFA’s Ground Lease for Lot 2 with Meigs Investments LLC, successor to Original Declarant as the fee owner of Lot 2.

D. WHEREAS, Declarant and CFA (collectively the “Parties”) desire to amend the Declaration to permit a redevelopment of Lot 2 by CFA as is more fully set forth herein.

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant and CFA agree as follows:

1. **General.** This Amendment is intended to be, and shall be construed as, an amendment of the Declaration. Capitalized terms used in this Amendment shall have the meaning ascribed to them in the Declaration, unless otherwise defined in this Amendment. The Declaration, as modified by this Amendment shall be referenced herein as the “Declaration.” Declarant and CFA agree that the foregoing

recitals are true and correct and a material part of this Amendment, and are hereby incorporated into the body of this Amendment.

2. **Exhibit B.** Declarant does hereby agree to amend the Declaration by deleting Exhibit B in its entirety and replacing it with *Exhibit B* attached hereto and incorporated herein.

3. **Approval of Lot 2 Modifications.** The modification to the improvements planned for Lot 2 as depicted or otherwise set forth on *Exhibit B* attached hereto (hereafter the "Modifications"), including but not limited to the construction of two canopies, modification of the parking and drive-thru lanes located on Lot 2, modification to the landscaping and such other alterations and improvements as are depicted on *Exhibit B* are hereby approved by the Declarant under the Declaration as well as in any other relevant capacity under any recorded or unrecorded document to which Declarant is a party.

4. **Permanent Exclusive Access Easement.** Declarant hereby grants to CFA and its Permittees, a permanent, exclusive access easement ("Permanent Drive-Through Easement") over and across such portions of Lot 1 as identified on *Exhibit D* attached hereto to permit CFA to locate and maintain its drive through approach lane in the location depicted on *Exhibit D* and for the vehicular and pedestrian ingress and egress of any of CFA's Permittees.

5. **Permanent Striping Easement.** Declarant hereby grants to CFA a permanent easement to install and maintain the directional striping and arrows in the locations on Lot 1 depicted on *Exhibit D*.

6. **Temporary Construction Easement.** Declarant hereby grants to CFA a temporary construction easement as reasonably necessary over Lot 1 to make the Modifications to Lot 2 as shown on the *Exhibit B*. CFA will use reasonable efforts to minimize disruption to the operation of the businesses conducted within Lot 1 during any period of construction. The Temporary Construction Easement will expire without the need for further documentation upon CFA's completion of the Modifications shown on *Exhibit B*.

7. **Temporary Construction Staging Area.** Pursuant to Section 3.4(c) of the Declaration, Declarant hereby approves CFA's proposed staging and storage area as depicted on *Exhibit E*.

8. **Permittees Access to Lot 2 over Lot 1.** Pursuant to Section 4.2 (b) and 4.2(d) of the Declaration, Permittees and their vehicles are granted ingress and egress on and over the Common Areas to access both Lot 1 and Lot 2. Declarant and CFA shall use commercially reasonable efforts to coordinate access to Lot 2 in a manner that will mitigate the adverse impact on the free flow of traffic on Lots 1 and 2.

9. **Prohibited Uses.** Section 1.23 (Prohibited Uses) of the Declaration is hereby further amended by deleting subsection 1.23(n) in its entirety and substituting the following therefor:

"(n) casino, gaming room, or "off track betting" operation;"

10. **Permitted (Common Area Uses).** Section 4.2 (Permitted Common Area Uses) of the Declaration is hereby amended by adding a new subsection 4.2(j) which reads in full as follows:

"(j) Storm and surface drainage and detention facilities, together with the right of storm and surface water drainage from Lot 2 on Lot 1 and from Lot 1 to Lot 2."

11. **Lawful Use and Prohibited Uses.** Section 2.1 of the Declaration is hereby deleted in its entirety and replaced with the following:

"2.1 Lawful Use and Prohibited Uses. The Project may be used for any lawful retail or commercial purpose not specifically prohibited herein. No portion of the Project shall be used for a Prohibited Use. Lot 1 is subject to the following further restrictive covenants:

a. So long as CFA timely opens for business pursuant to the terms and conditions of the CFA Lease and, thereafter does not cease to operate for a period in excess of twelve (12) consecutive months (except that the time during which operations cease due to remodeling, condemnation, casualty or event of force majeure, as well as a chicken shortage or issues relating to the quality or safety of chicken, will not count towards such 12-month period (each "Exempted Discontinuances"), or permanently and materially changes the use of Lot 2 (i.e., such that it is operated for a use other than the Exclusive Use), no portion of Lot 1 will be leased, used or occupied as a business, including without limitation, a food truck, kiosk, stand, booth or area located inside another business facility, selling or serving chicken as a principal menu item (the "Exclusive Use"). For the purposes of this Declaration, "a business selling or serving chicken as a principal menu item" means a drive-thru restaurant, a food truck, kiosk, stand, booth or area located inside another business facility deriving twenty five percent (25%) or more of its food and beverage gross sales from the sale of chicken. CFA acknowledges that, as of the effective date of the CFA Lease, Declarant is in negotiations with Qdoba Restaurant Corporation (or has executed a Lease with Qdoba Restaurant Corporation) for a restaurant to be located on Lot 1, and CFA makes an exception to the Exclusive Use in respect to a Mexican-style restaurant doing business as Qdoba Mexican Eats or any other trade name (excluding El Pollo Loco, Pollo Campero, Pollo Tropical or any other Mexican-style restaurant that uses or references "chicken" or "pollo" in its name). In addition, except for Panda Express, CFA's Exclusive Use shall not apply to a Chinese or Asian-style sit down restaurant without a drive-thru selling a wide variety of Chinese or Asian-style dishes, so long as any such restaurant does not use or reference "chicken" in its name. These specific exceptions will not be deemed to apply to any other agreement entered into by CFA or waive any of its rights thereunder.

b. No restaurant will be permitted on any portion of Lot 1 unless the Project maintains a parking ratio permitting same in compliance with code (including the use of a limited number of bicycle racks in lieu of parking stalls, as permitted per code) without the need for a variance.

c. No portion of Lot 1 will be leased, used or occupied by or for any of the following uses: McDonald's, Wendy's, Arby's, Boston Market, Kentucky Fried Chicken, Popeye's, Church's, Bojangle's, Mrs. Winner's, Carl's Jr., Hardee's, Chicken Out, Zaxby's, Ranch One, El Pollo Loco, Pollo Campero, Pollo Tropical, Raising Cane's, Chester's, Bush's Chicken, Biscuitville, Chicken Now, PDQ, ChikWich, Ezell's Famous Chicken, Roy Rogers, Fuku, Shake Shack, Slim Chickens, or Chicken Shack."

12. CFA Consent. Notwithstanding anything in the Declaration to the contrary, so long as CFA is entitled to possession of Lot 2 or any portion thereof under the CFA Lease, the Declaration shall not be amended or modified without CFA's consent, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding anything in the Declaration or this Amendment to the contrary, it shall be reasonable for CFA to withhold consent to any amendment or modification to the Declaration that would increase CFA's obligations under the Declaration or reduce or diminish CFA's rights and benefits under the Declaration.

13. **Miscellaneous.**

(a) **Notice Address for Declarant.** For purposes of Section 9.16 of the Declaration, notices to Declarant shall be delivered to:

PHTRE, LP
c/o Gig Harbor Holdings, LLC
5403 Olympic Drive NW, Suite 101
Gig Harbor, Washington 98335

(b) **Representations:** Each undersigned party represents and warrants that (i) such party is a Consenting Party under the Declaration, (ii) such party has been duly organized and is in good standing under the laws of the state of its organization, and (iii) such party has the full right, power and authority, and has duly authorized its undersigned representative, to execute and deliver this Amendment.

(c) **Severability:** If any provision of this Amendment shall be or become invalid, illegal or enforceable in any response under any applicable law, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby.

(d) **Continuation of Declaration:** Except as expressly modified above, all provisions, terms and conditions of the Declaration shall continue in full force and effect. The restrictions, benefits and obligations hereunder shall create mutual benefits and servitudes running with the land. Subject to the other provisions of the Declaration, this Amendment shall bind and inure to the benefit of the parties hereto, their respective heirs, representatives, lessees, successors and assigns. The singular number includes the plural and vice versa and the masculine gender includes the feminine and neuter and vice versa.

(e) **Binding Effect:** This Amendment shall be binding on the parties hereto and their respective successors and assigns; the provisions of this Amendment shall run with title to the land.

(f) **Counterparts:** This Amendment may be executed and acknowledged in one or more counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same instrument.

(g) **Recordation:** This Amendment shall be recorded in the Records.

[Remainder page intentionally blank; signature pages follow]

IN WITNESS WHEREOF, Declarant and CFA have executed this Amendment, which shall be effective as of the Effective Date.

PHTRE, LP, a California limited partnership

By: PHLT, LLC, a California limited liability company, its Managing General Partner

By: Dianna Lynn Stanley's Subtrust of the Philip Hohnstein Trust dated August 9, 1988, its Sole Member

By: Ryan Y Rehberg, Pres. Tee
Ryan Y Rehberg, as President of **Rehberg Law Group, PLLC**, a Washington professional limited Liability company, in its capacity as Successor Trustee

ACKNOWLEDGMENT

STATE OF Washington)
) ss.
COUNTY OF King)

This instrument was acknowledged before me on March 29th, 2023, by Ryan Y Rehberg, as President of Rehberg Law Group, PLLC, a Washington professional limited liability company, in its capacity as Successor Trustee.

(Seal, if any)



Debra A. Stern
(signature of notarial officer)
Title (and Rank) Notary Public

My Commission Expires: 6-19-2023

CHICK-FIL-A, INC., a Georgia corporation

By: *Ashanti Hunt*

Name: **Ashanti Hunt**

Its: **Senior Director**

Date: *September 7, 2022*

ACKNOWLEDGMENT

STATE OF *Georgia*)
) ss.
COUNTY OF *Fulton*)

This instrument was acknowledged before me on *December 7*, 2022, by *Ashanti Hunt* (name(s) of person(s)), as *SR. Director* (type of authority, e.g, officer, trustee, etc.) of CHICK-FIL-A, INC., a Georgia corporation (name on behalf of whom instrument was executed.)



Benjie K. McDonald
(signature of notarial officer)
Title (and Rank) Notary Public

My Commission Expires: *July 28, 2023*

EXHIBIT "B"

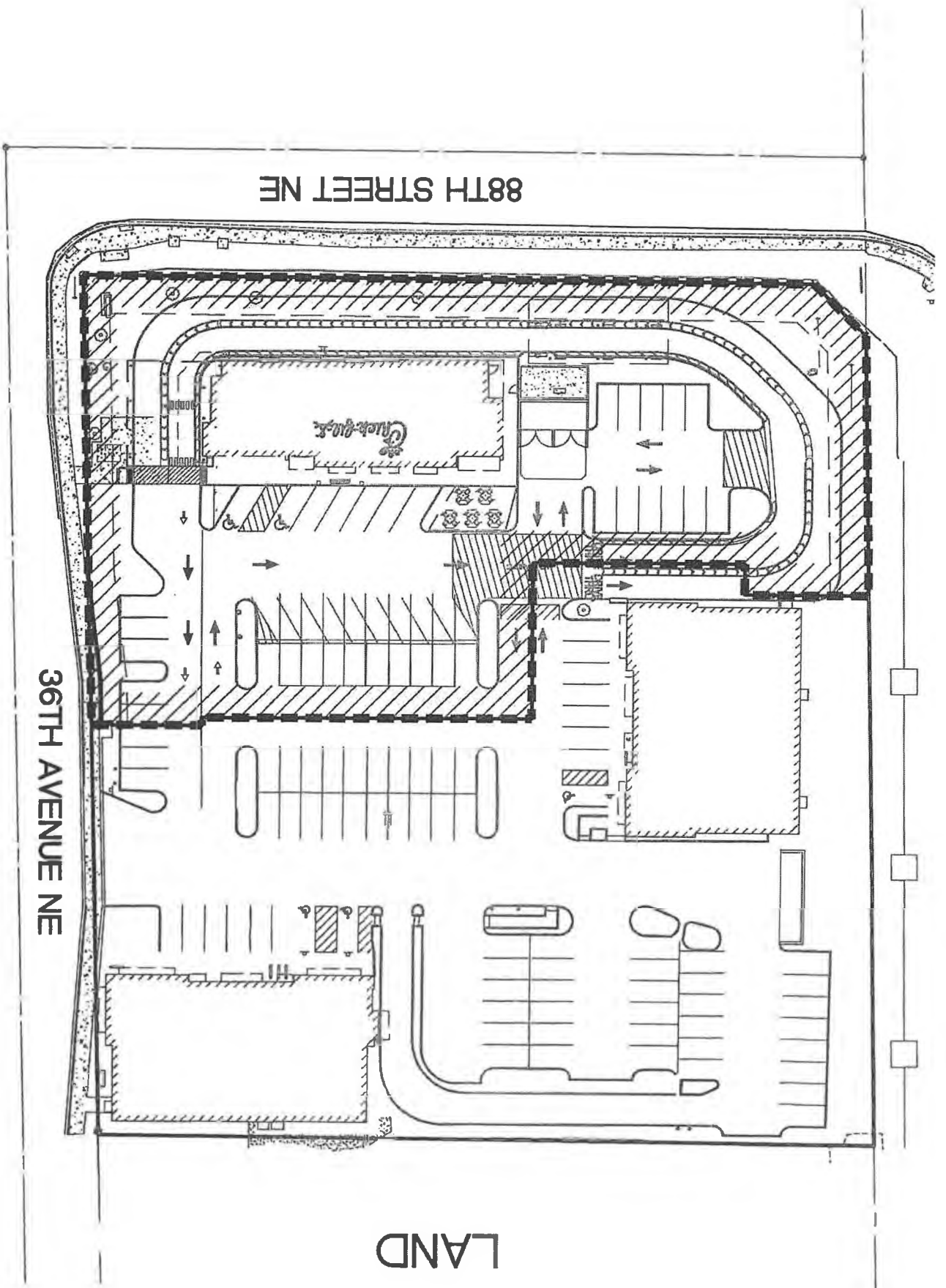
DEPICTION OF ADJOINING PROPERTY, CONSTRUCTION LIMIT LINES, CRITICAL
COMMON AREAS, PROTECTED DRIVES, NO CHANGE AREA, ANY EXCLUSIVE PARKING
AREAS, MULTI-TENANT SIGN AND OUTDOOR SEATING AREA

[See attached 9 pages]

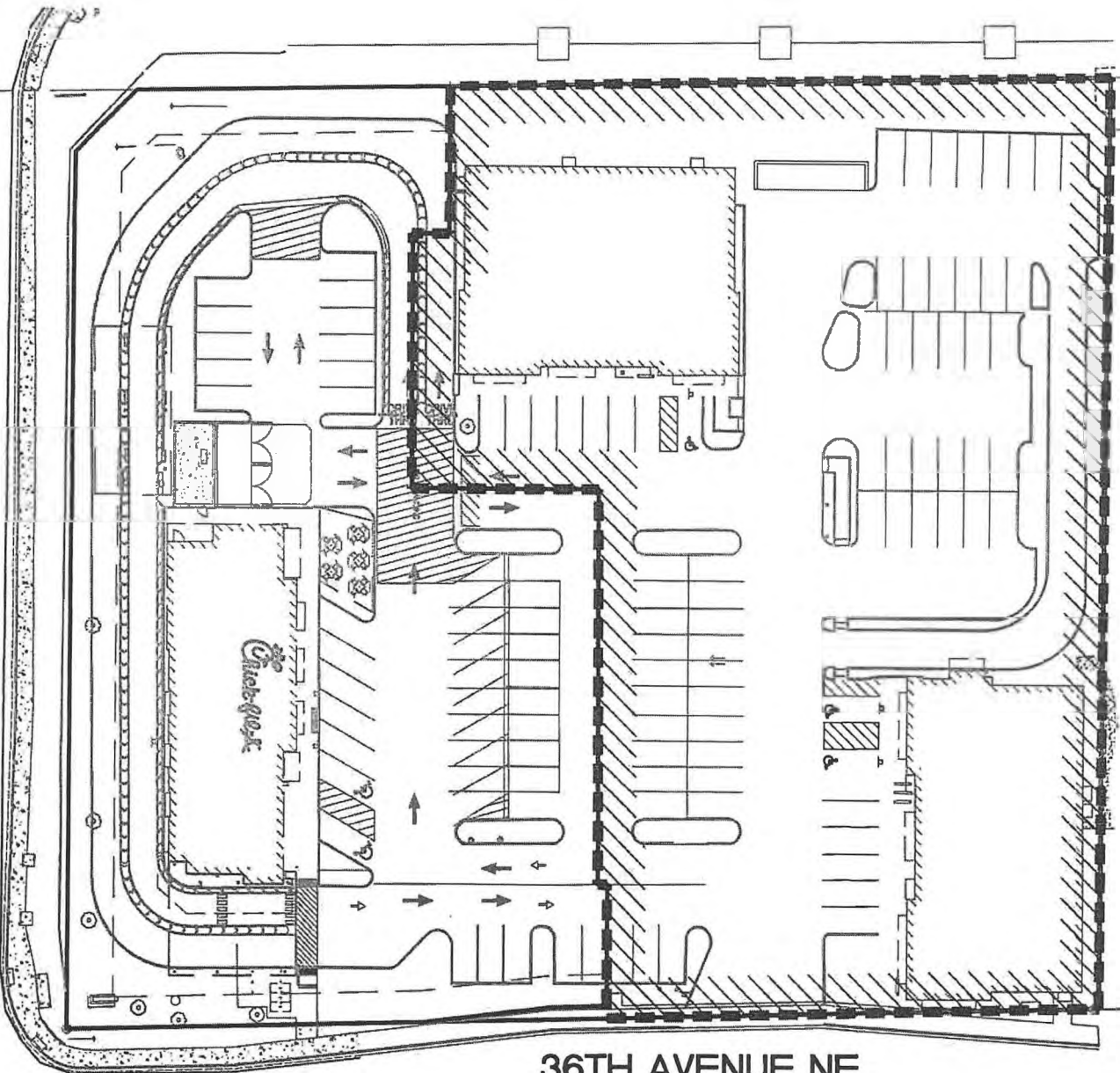
88TH STREET NE

36TH AVENUE NE

LAND



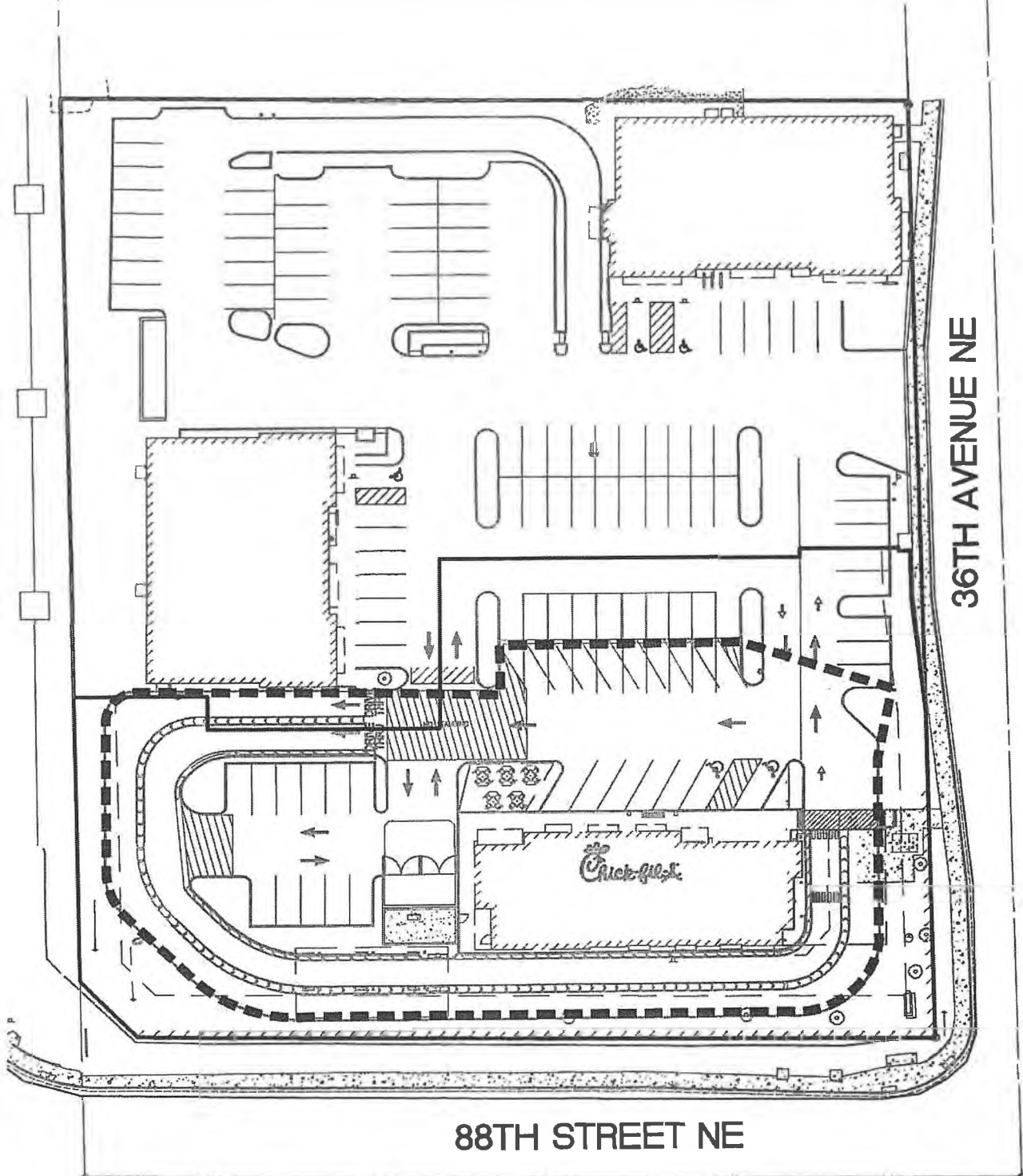
ADJOINING PROPERTY



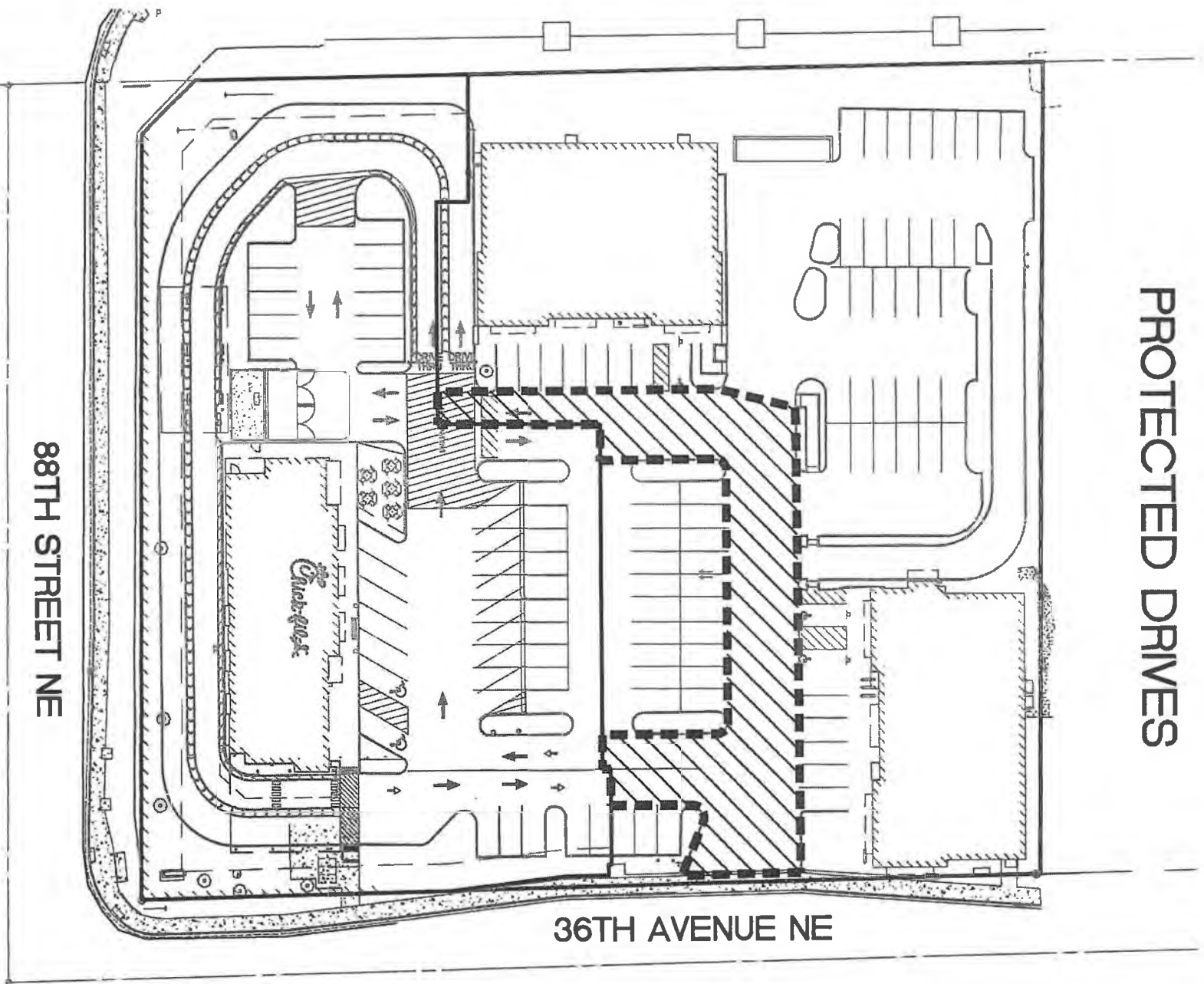
36TH AVENUE NE

88TH STREET NE

TENANT CONSTRUCTION LIMIT LINES



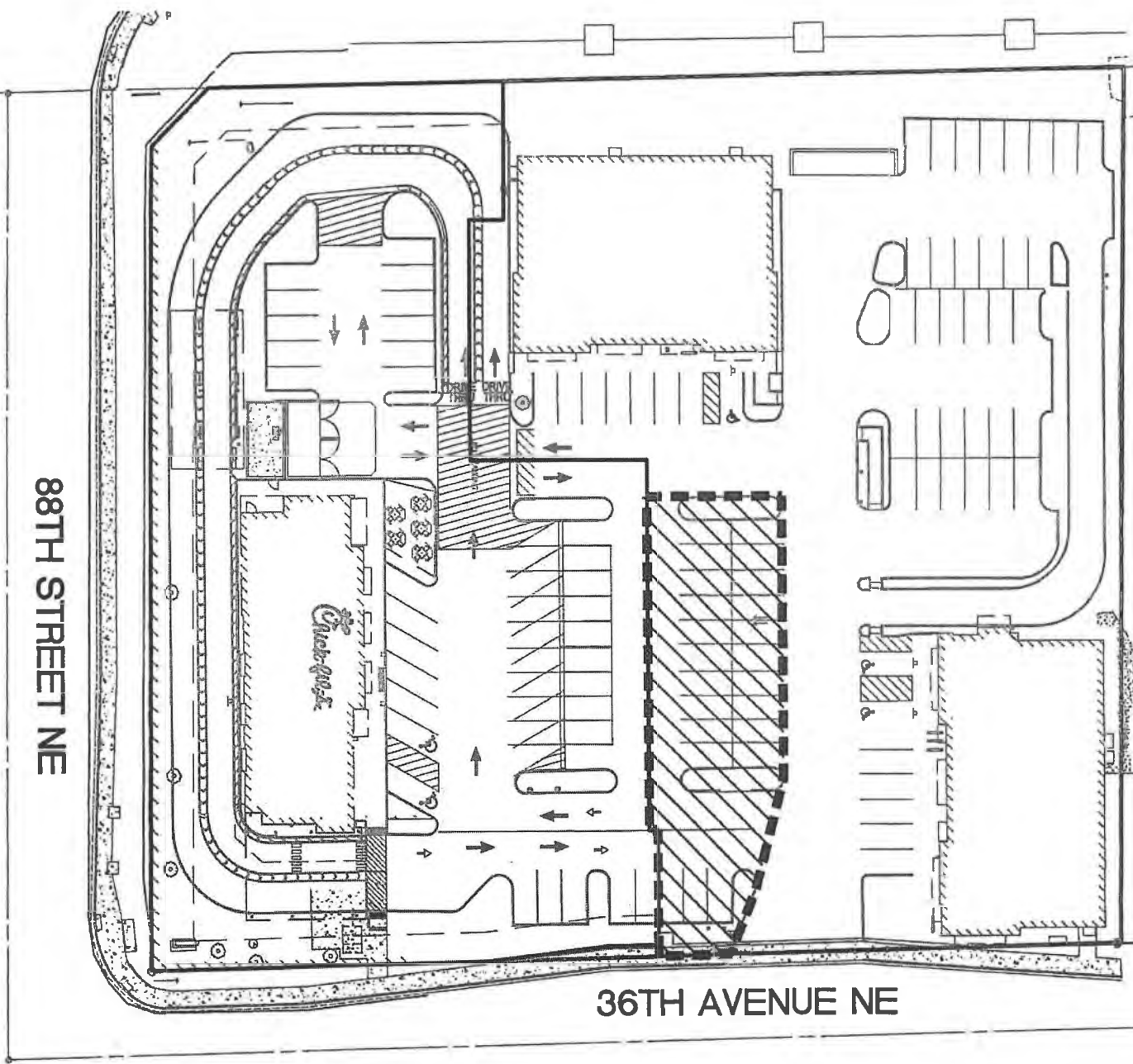
PROTECTED DRIVES



36TH AVENUE NE

88TH STREET NE

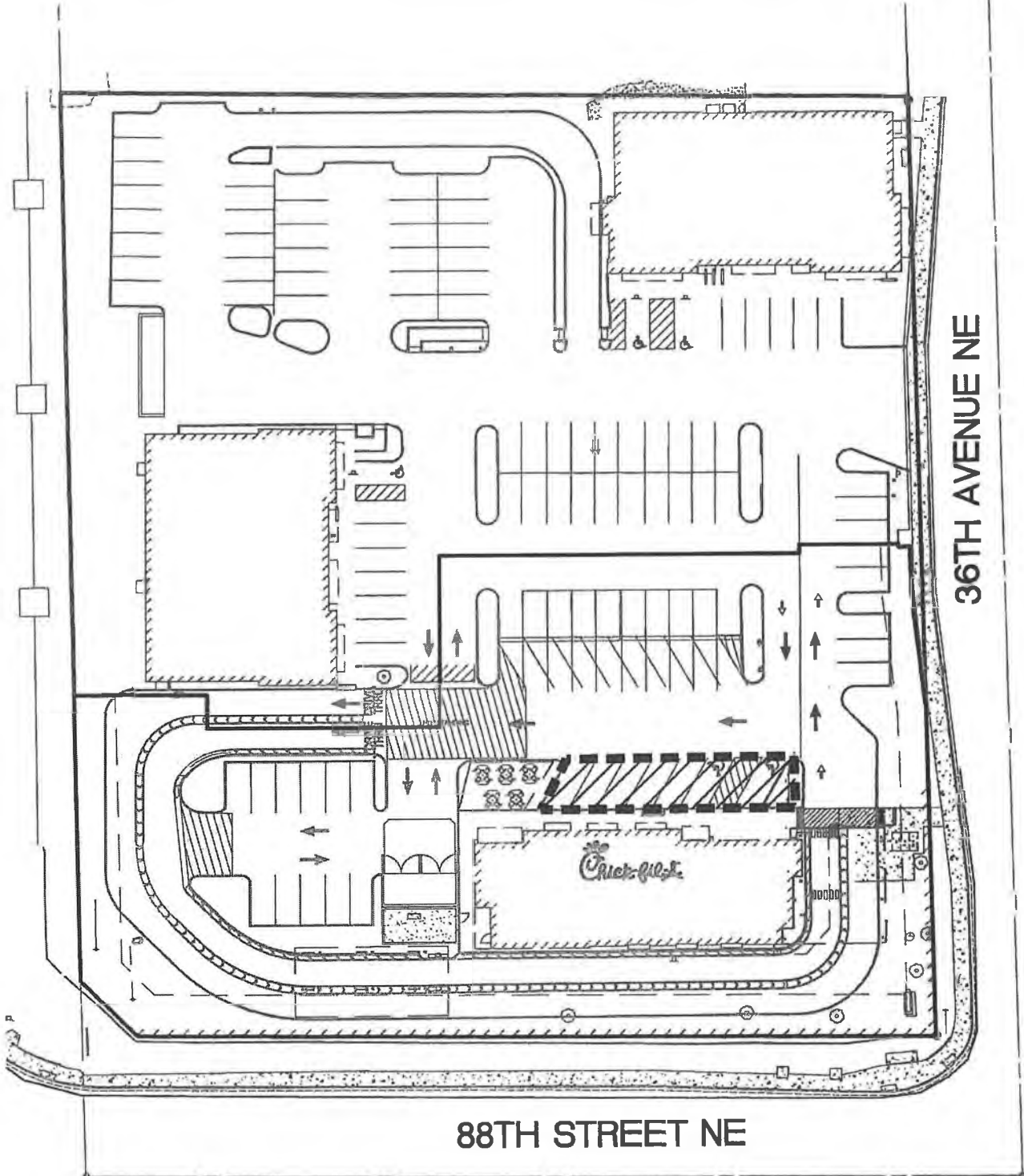
NO CHANGE AREA



88TH STREET NE

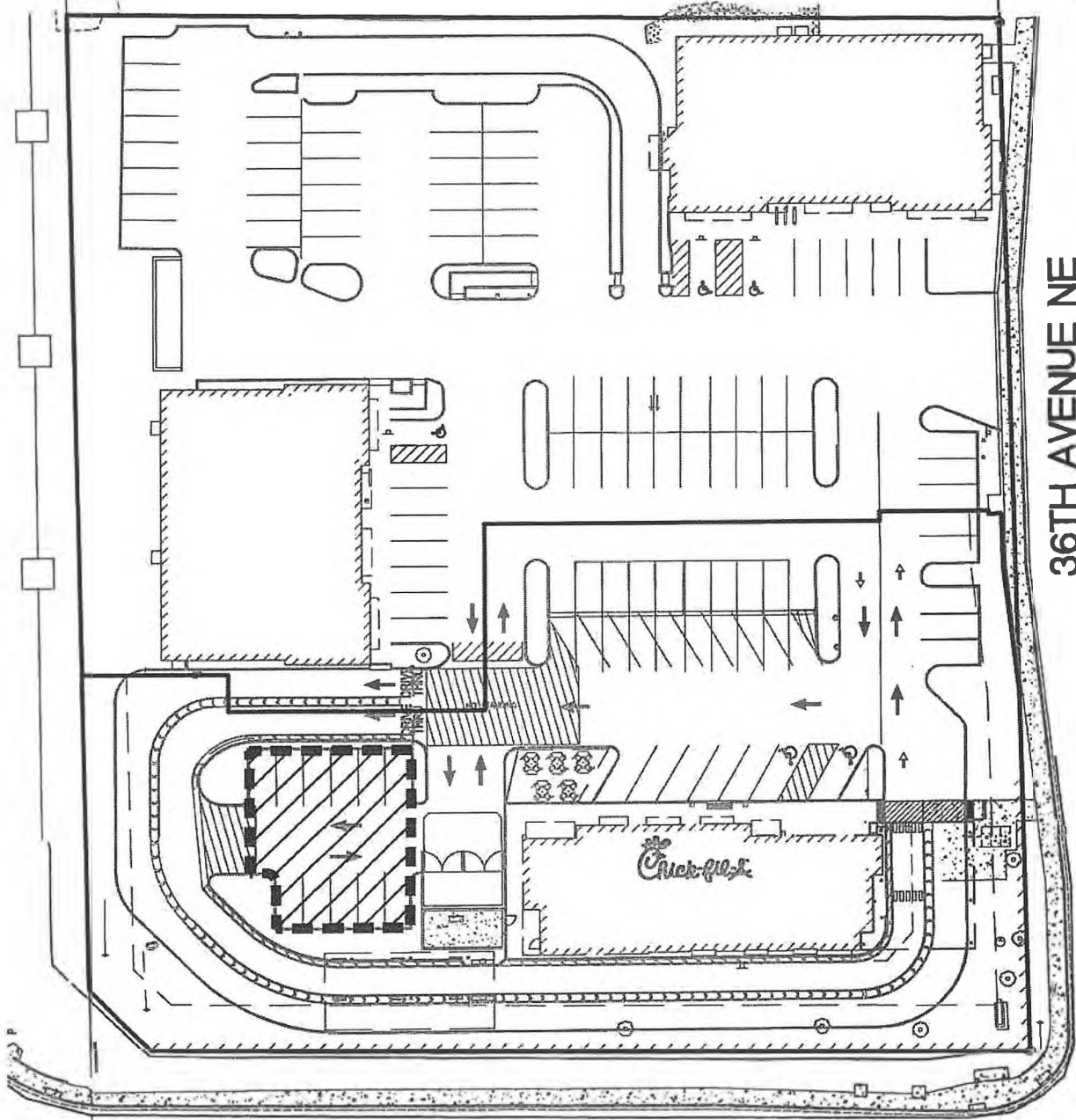
36TH AVENUE NE

NON-EXCLUSIVE PARKING SPACES



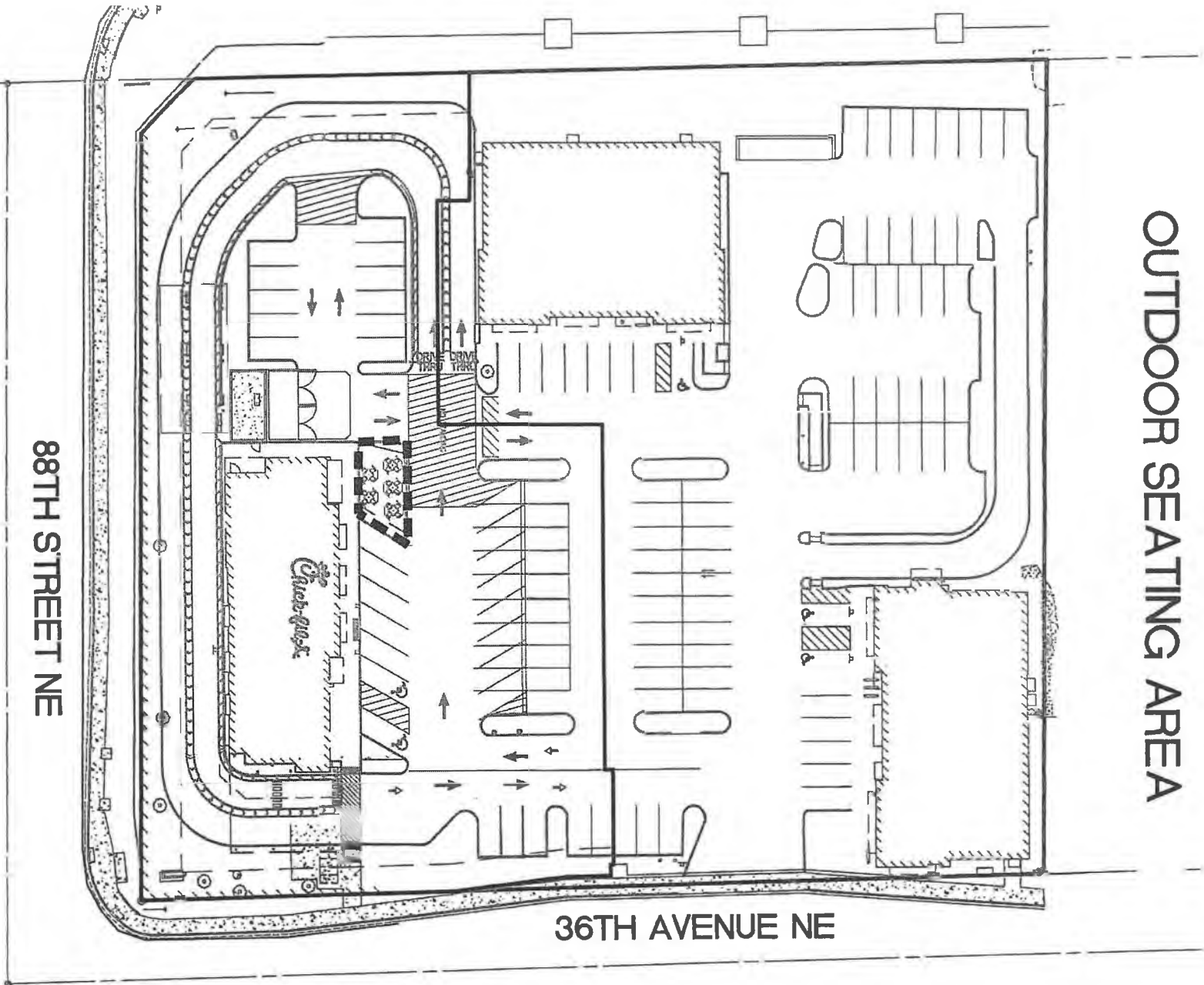
TENANT'S RESERVED PARKING

36TH AVENUE NE



88TH STREET NE

OUTDOOR SEATING AREA

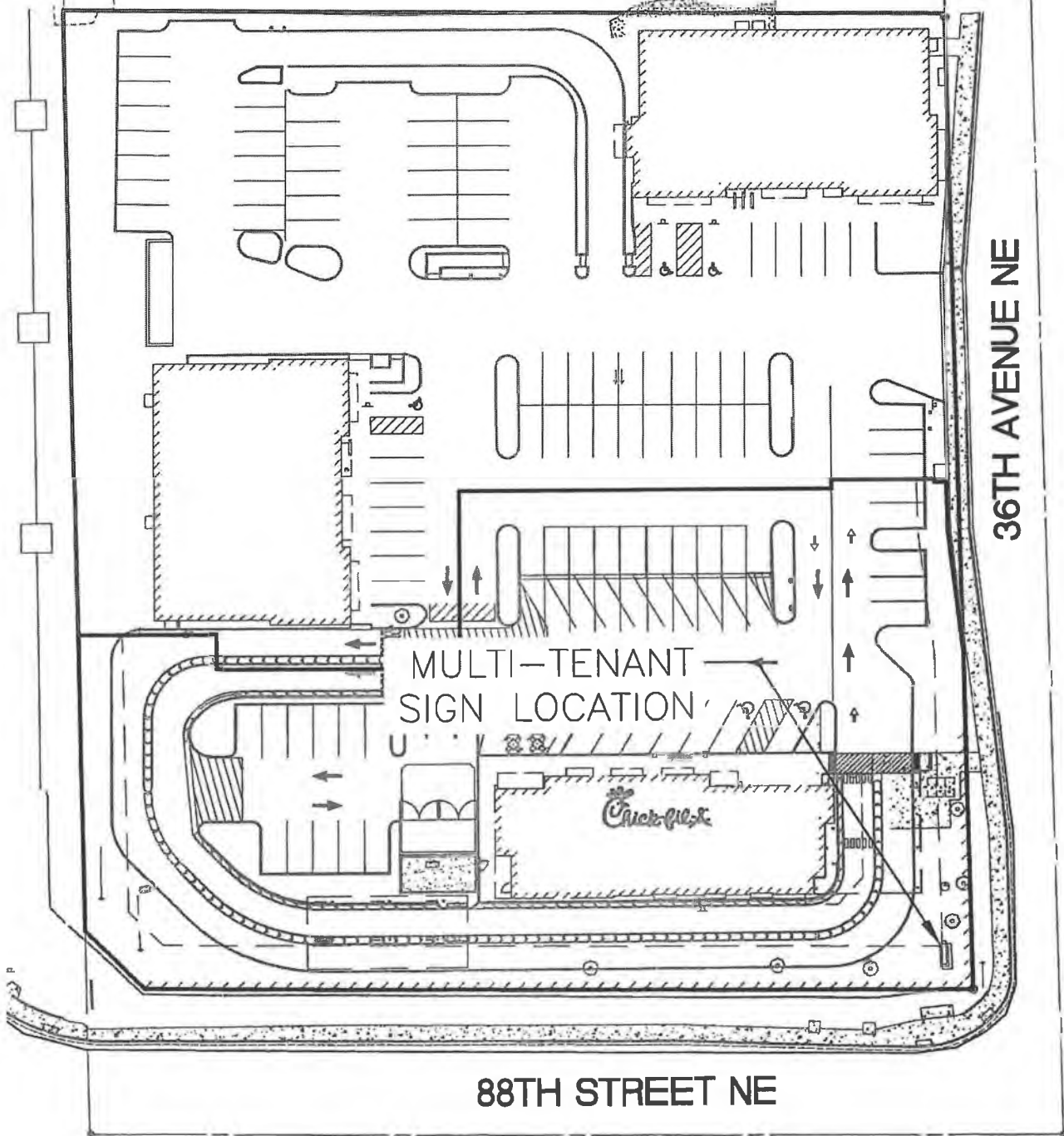


88TH STREET NE

36TH AVENUE NE

MULTI-TENANT SIGN

36TH AVENUE NE



88TH STREET NE

EXHIBIT D

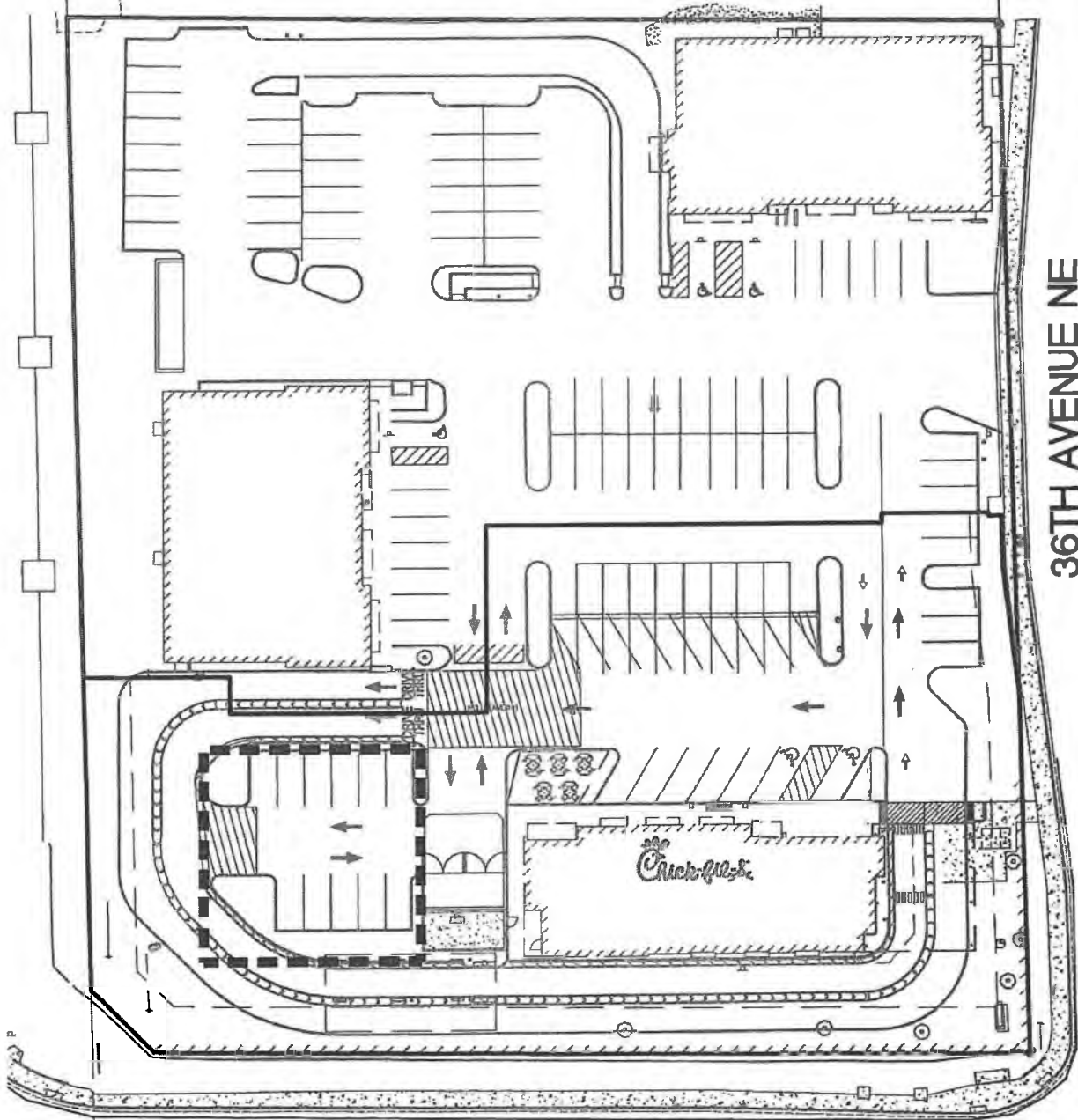
PERMANENT EXCLUSIVE ACCESS EASEMENT AND STRIPING EASEMENT

[TO BE ATTACHED]

EXHIBIT E
TEMPORARY CONSTRUCTION STAGING AREA
[TO BE ATTACHED]

CONSTRUCTION STAGING AREA

36TH AVENUE NE



88TH STREET NE