

BAC/svm/b
11/24/89 Rv.8
Dev-Agre

015241 245⁰⁰ PM
Doc. No. 245⁰⁰ PM
WOODBURY COUNTY, IOWA-Filed for Record
At 1:24 PM Mo 24th Day 24 Yr. 1989
PM
MOSE YANNEY, RECORDER
By Alman Deputy

CLERK
89-8000

COPY

DEVELOPMENT AGREEMENT

THIS AGREEMENT made and entered into this 14th day of November, 1989, by and between the CITY OF SIOUX CITY, IOWA hereinafter "CITY", DIAL REALTY, INC., a Nebraska corporation, MENARD, INC., a Wisconsin corporation and FRED DAVENPORT, JR. hereinafter collectively referred to as "DEVELOPERS".

W I T N E S S E T H:

WHEREAS, one of the DEVELOPERS (Davenport) is the owner of the real estate described in the attached Exhibit "A" and DEVELOPERS desire to construct a commercial development on a portion of such real estate which is described in Exhibit "B" attached and referred to herein as "Menard Parcel"; and

WHEREAS, the parties desire to establish between themselves their various obligations, duties and responsibilities.

NOW, THEREFORE, in consideration of the promises and mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

I. Municipally Funded Project Improvements.

- A. The CITY agrees to cause to be constructed certain off-site public improvements consisting of water main extensions and street extensions as described in the attached Exhibit "C".
- B. DEVELOPER agrees to perform the actual construction of the off-site improvements as described in Exhibit "C" and all on-site improvements described in Exhibit "D".
- C. CITY agrees to reimburse DEVELOPER for the actual cost of construction of such off-site improvements in an amount not to exceed the costs set forth in said Exhibit "C". Any cost or costs which exceed those set forth in Exhibit "C", on a line item basis, shall be paid by DEVELOPER and shall not be offset by any savings due to the construction of any other line item at less than the cost set out in Exhibit "C". The actual cost of construction shall mean the cost at which DEVELOPER shall construct such off-site improvements or the lowest responsible bid which the developer shall receive for any line item of cost, whichever is less. The DEVELOPER shall obtain bids from at least three responsible bidders. CITY's obligation to reimburse DEVELOPER shall be contingent upon the occurrence of the contingencies set forth in the following Paragraphs D. 1) and 2).

ROLL 261 PAGE 1582

D. DEVELOPER further agrees as follows:

- 1) The DEVELOPER shall cause to be constructed or shall construct on the real estate described in Exhibit "B" (the "Menard Parcel") a commercial structure substantially of the size and configuration as set forth in the Site Plan attached hereto as Exhibit "E", with such construction being completed and an occupancy permit being obtained for the use thereof on or before December 31, 1992; and
- 2) The DEVELOPER shall have, on or before December 31, 1992, entered into an assessment agreement which is acceptable to the CITY establishing a minimum assessable value of \$1,760,000.00 for the improvements constructed upon the real estate described in Exhibit "B" (the "Menard Parcel"). See paragraph III.A for the value of the underlying real property.
- 3) DEVELOPER shall cause to be constructed or shall construct on real estate described in Exhibit "H" a commercial structure substantially the size and configuration as set forth in the site plan attached hereto as Exhibit "I", with such construction being completed and an occupancy permit obtained for the use thereof on or before December 31, 1993.
- 4) DEVELOPER shall have, on or before December 31, 1993, entered into an assessment agreement which is acceptable to the CITY establishing a minimal assessable value of \$2,050,000.00 for the improvements to be constructed upon the real estate described in Exhibit "H". (See paragraph III.A. for the value of the underlying real property.)

II. On-Site Development.

- A. DEVELOPER shall be permitted to erect freestanding signs on the real estate described in Exhibit "A" in accordance with the Sign Site Plan attached hereto as Exhibit "F". Each such freestanding sign shall be limited to a sign area (as defined by the CITY's Municipal Code) of 200 square feet and a height not to exceed 55 feet. The sign located upon the real estate described in Exhibit "B" shall be limited to identifying the principal or major occupant of the said real estate (the signs on the proposed Menard's building conform to the existing sign ordinance have been approved as submitted) and the sign located upon the remainder of the real estate described in Exhibit "A" (Exhibit "A" real estate less the Exhibit "B" real estate) shall be limited to identifying the premises as provided in section 4.36.160 (2)(a) of the

ROLL 261 PAGE 1583

Municipal Code shall apply to the premises.

- B. The DEVELOPER shall be allowed to utilize a cross parking easement that encompasses the entire parcel being developed and said cross parking agreement shall require that the total number of parking places for the property described in Exhibit H shall not be less than five (5) parking places per thousand (1,000) square feet of retail shopping area, and not less than four (4) parking spaces per thousand (1,000) square feet of floor space of the main building on the Menard Parcel (Exhibit B).

III. Value of Real Estate for Tax Purposes:

- A. DEVELOPER and CITY have previously entered into an agreement fixing the value of the real estate as a result of a development agreement pertaining to construction of property known as "Wal-Mart" Development. The entire development site has now been enlarged by the addition of certain real estate acquired by DEVELOPER and the entire tract is shown in the attached Exhibit G and referenced thereon as parcels 1, 2, 3, 4 and 5.
- B. DEVELOPER agrees that the valuations shown for each individual parcel on the attached Exhibit G are acceptable as minimum valuations for use in connection with the assessment agreement to be entered into by the DEVELOPER with the CITY.
- C. The original minimum assessment valuation was fixed at \$800,000.00 prior to the addition of the real estate shown as parcels 3 and 4 on Exhibit G. DEVELOPER agrees that the total minimum real estate valuation for the entire site shall be increased to \$1,086,000.00 and shall be allocated to the parcels shown on the attached Exhibit G in the amount set out thereon on each parcel.

IV. City Activities (Tax Abatement).

- A. The CITY shall form an urban revitalization district by July 1, 1990, which shall include the real estate described in Exhibit "B" (the "Menard Parcel"). CITY agrees to abate all taxes upon the real estate or improvements located thereon for the construction period and three full years thereafter in accordance with Sections 403 and 404 of the Iowa Code.

ROLL 261 IMAGE 1584

B. The CITY shall use its best efforts to assist the DEVELOPER in obtaining a burning permit for the trees and buildings located upon the subject property.

V. General Provisions.

- A. This Agreement shall be filed for record and shall be binding on the parties, their successors and assigns.
- B. This Agreement shall be interpreted according to the laws of the State of Iowa.
- C. Any notice, demand, or communication under this agreement by either party to the other party shall be sufficiently given if it is dispatched by regular mail, postage prepaid, or delivered personally as follows:

1) In the case of DEVELOPER, to:

- (a) Fred Davenport, Jr.
1104 - 6th Street
Sioux City, IA 51101
- (b) Dial Realty, Inc.
11506 Nicholas, Suite 200
Omaha, NE 68154
ATTN: Chris Held, President
or Robert L. Welstead, Vice-President
- (c) Menard, Inc.
4777 Menard Drive
Eau Claire, WI 54703
ATTN: Marv Procnaska, Vice President,
Real Estate

2) In the case of CITY, to:

- (a) City Manager
City Hall
Sixth & Douglas
P.O. Box 447
Sioux City, IA 51102
- (b) City Attorney
City Hall
6th & Douglas
P.O. Box 447
Sioux City, IA 51102

ROLL 261 PAGE 1585

VI. Limitation.

The terms and conditions of this agreement shall be binding upon "Menard" and "Dial" at the time both of them acquire ownership and title to any of the real estate described in this agreement, and provided, however, in the event "Menard" or "Dial" elect not to acquire ownership and title to any of the real estate described in the agreement, said party shall have no liability hereunder. All parties acknowledge that at the time of the execution of this agreement, "Davenport" is the sole owner of all of the real estate described herein in Exhibits A and B.

IN WITNESS WHEREOF, the CITY and DEVELOPER have caused this Agreement to be duly executed as of the date and year first above written.

CITY OF SIOUX CITY, IA

DIAL REALTY, INC.

By _____
Attest _____
City Clerk

By Robert L. Westead
Attest _____
Title ROBERT L. WESTEAD

FRED DAVENPORT, JR.

MENARD, INC.

Fred Davenport, Jr.
Fred Davenport, Jr.

By _____
Title _____
Attest _____
Title _____

CITY ACKNOWLEDGEMENT

STATE OF IOWA)
)ss.
COUNTY OF WOODBURY)

On this _____ day of _____, A.D. 1989, before me, a Notary Public duly commissioned and qualified in and for said County and State, personally appeared Loren D. Callendar, Mayor of the City of Sioux City, Iowa, and G. W. Gross, City Clerk of said City, each being to me personally known to be the identical persons and officers named in the foregoing instrument, who executed the same under and by virtue of the authority vested in them by the City Council of said City, and each for

ROLL 261 IMAGE 1586

himself acknowledged the execution thereof to be his voluntary act and deed for the purposes herein expressed.

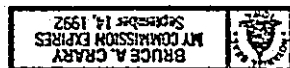
IN TESTIMONY WHEREOF, I have hereunto set my hand and notarial seal at Sioux City, Iowa, the day and year last above written.

Notary Public, in and for
Woodbury County, Iowa

DIAL ACKNOWLEDGEMENT

STATE OF IOWA)
)ss.
COUNTY OF WOODBURY)

On this 22 day of November, A.D., 1989, before me the undersigned, a Notary Public in and for said State, personally appeared Robert L. Welstead to me personally known, who, being by me duly sworn, did state that he is the Vice President of said corporation; that no seal has been procured by the said corporation; that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and that the said Robert L. Welstead as such officer, acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by him voluntarily executed.

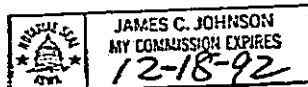


Notary Public, in and for
Woodbury County, Iowa

DAVENPORT ACKNOWLEDGEMENT

STATE OF IOWA)
)ss.
COUNTY OF WOODBURY)

On this 14th day of NOVEMBER, A.D., 1989, before me, the undersigned, a Notary Public in and for said State, personally appeared Fred Davenport, Jr. to me known to be the identical person named in and who executed the foregoing instrument, and acknowledged that he executed the same as his voluntary act and deed.



Notary Public, in and for
Woodbury County, Iowa

ROLL 261 IMAGE 1587

VI. Limitation.

The terms and conditions of this agreement shall be binding upon "Menard" and "Dial" at the time both of them acquire ownership and title to any of the real estate described in this agreement, and provided, however, in the event "Menard" or "Dial" elect not to acquire ownership and title to any of the real estate described in the agreement, said party shall have no liability hereunder. All parties acknowledge that at the time of the execution of this agreement, "Davenport" is the sole owner of all of the real estate described herein in Exhibits A and B.

IN WITNESS WHEREOF, the CITY and DEVELOPER have caused this Agreement to be duly executed as of the date and year first above written.

CITY OF SIOUX CITY, IA

DIAL REALTY, INC.

By _____
Attest _____
City Clerk

By _____
Attest _____
Title _____

FRED DAVENPORT, JR.

MENARD, INC.

Fred Davenport, Jr.
Fred Davenport, Jr.

By *Orville Brodus*
Title *V.P.*
Attest *Robert W. [illegible]*
Title *Corporate Counsel*

CITY ACKNOWLEDGEMENT

STATE OF IOWA)
)ss.
COUNTY OF WOODBURY)

On this _____ day of _____, A.D. 1989, before me, a Notary Public duly commissioned and qualified in and for said County and State, personally appeared Loren D. Callendar, Mayor of the City of Sioux City, Iowa, and G. W. Gross, City Clerk of said City, each being to me personally known to be the identical persons and officers named in the foregoing instrument, who executed the same under and by virtue of the authority vested in them by the City Council of said City, and each for

ROLL 261 PAGE 1588

himself acknowledged the execution thereof to be his voluntary act and deed for the purposes herein expressed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and notarial seal at Sioux City, Iowa, the day and year last above written.

Notary Public, in and for
Woodbury County, Iowa

DIAL ACKNOWLEDGEMENT

STATE OF IOWA)
)ss.
COUNTY OF WOODBURY)

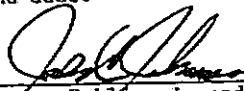
On this _____ day of _____, A.D., 1989, before me the undersigned, a Notary Public in and for said State, personally appeared Robert L. Welstead to me personally known, who, being by me duly sworn, did state that he is the Vice President of said corporation; that no seal has been procured by the said corporation; that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and that the said Robert L. Welstead as such officer, acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by him voluntarily executed.

Notary Public, in and for
Woodbury County, Iowa

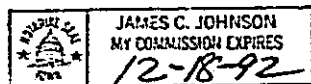
DAVENPORT ACKNOWLEDGEMENT

STATE OF IOWA)
)ss.
COUNTY OF WOODBURY)

On this 14TH day of NOVEMBER, A.D., 1989, before me, the undersigned, a Notary Public in and for said State, personally appeared Fred Davenport, Jr. to me known to be the identical person named in and who executed the foregoing instrument, and acknowledged that he executed the same as his voluntary act and deed.



Notary Public, in and for
Woodbury County, Iowa



ROLL 261 PAGE 1589

MENARD ACKNOWLEDGEMENT

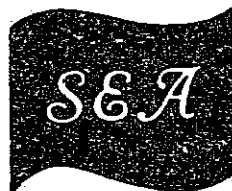
STATE OF Wisconsin)
COUNTY OF Eau Claire) ss.

On this 17th day of November, A.D., 1989, before me, the undersigned, a Notary Public in and for said State, personally appeared Marv Prochaska to me personally known, who being by me duly sworn, did state that he is the Vice President / Real Estate of said corporation; that (no seal has been procured by the said) or (the seal affixed thereto is the seal of said) corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and that the said Marv Prochaska V.P. as such officer, acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by him voluntarily executed.

[Signature]
Notary Public, in and for
Eau Claire Co. WI

my Commission is permanent

ROLL 261 PAGE 1592



Siouxland Engineering Associates, P.C.

204 W. 21st Street
South Sioux City, Nebraska 68776
402-494-2143

August 18, 1989 (REVISED August 29, 1989)

EXHIBIT C

OFF SITE CONSTRUCTION WORK

Actual Unit Costs
with extension of bids of Anderson Construction
and D.A. Davis Co., Inc. on Part I-Eastgate are extended
to include the work to be done on Part II - Eastgate

OFF SITE WATERMAIN

I. OFF SITE WATERMAIN - Construct a watermain along the north side of the city street from existing 12" DIP easterly to the east line of of the property and then north to property line.

Quantity	Units	Description	Units	Estimated Total Cost
80	LF	10" DIP & Plug	\$ 17.00	\$ 1,360.00
425	LF	12" DIP & Plug	\$ 18.00	\$ 7,650.00
1	EA	12" Gate Valve	\$ 760.00	\$ 760.00
1	EA	Connect to Existing	\$ 480.00	\$ 480.00
1	EA	Hydrants	\$1300.00	\$ 1,300.00
1	EA	10" Valve	\$ 750.00	\$ 750.00
1	EA	6" Valve	\$ 350.00	\$ 350.00
TOTAL				\$ 12,650.00

Estimated Construction Cost	\$ 12,650.00
Contingency	\$ 0.00
Engineering	\$ 2,100.00
Inspection	\$ 830.00
Testing	\$ 540.00

TOTAL ESTIMATED CONSTRUCTION COST
OF OFF SITE WATERMAIN----- \$ 16,120.00

II. OFF SITE - STORM SEWER

Quantity	Units	Description	SUnits	Estimated Total Cost
85	LF	15" RCP Class III	\$ 15.40	\$ 1,309.00
560	LF	18" RCP Class III	\$ 18.00	\$ 10,080.00
330	LF	24" RCP Class III	\$ 25.00	\$ 8,250.00
100	LF	30" RCP Class III	\$ 34.00	\$ 3,400.00
120	LF	36" RCP Class III	\$ 36.00	\$ 4,320.00
1	EA	30" Flared End Section	\$ 500.00	\$ 500.00
1	EA	36" Flared End Section	\$ 400.00	\$ 400.00
17	EA	SW-8 Inlets	\$ 950.00	\$ 15,150.00
			TOTAL	\$ 43,409.00

Estimated Construction Cost	\$ 43,409.00
Contingency	\$ 1,200.00
Engineering	\$ 6,600.00
Inspection	\$ 3,200.00
Testing	\$ 3,250.00

TOTAL ESTIMATED CONSTRUCTION COST
OF OFF SITE STORM SEWER ----- \$ 57,659.00

OFF SITE STREET PAVING

III. STREET - Construct an improved 25' BB 8" slab with 42' BB near Gordon Dr. on existing county road now annexed and a city street.

Quantity	Units	Description	SUnits	Estimated Total Cost
700	SY	8" PCC Paving (25' BB)	\$ 23.00	\$ 16,100.00
700	SY	Subgrade Prep	\$ 2.20	\$ 1,540.00
80	TON	Gravel	\$ 8.00	\$ 560.00
			TOTAL	\$ 18,200.00

Estimated Construction Cost	\$ 18,200.00
Contingency	\$ 1,500.00
Engineering	\$ 3,300.00
Inspection	\$ 1,200.00
Testing	\$ 630.00

TOTAL ESTIMATED CONSTRUCTION COST
OF OFF SITE STREET PAVING----- \$ 24,830.00

ROLL 261 PAGE 1594

Page 3

IV. GRADING - off site - Street ROW

Quantity	Units	Description	Units	Estimated Total Cost
76,332	CY	Excavate & Place w/M & D	\$ 0.61	\$ 46,562.52
2,400	MG	Place Water	\$ 2.00	\$ 4,800.00
2,400	MG	Furnish	\$ 0.90	\$ 2,160.00
1	AC	Furnish & Place Seeding & Mulching w/Fertilizer	\$ 363.00	\$ 363.00
600	SY	Furnish & Place Erosion Control Matting	\$ 4.50	\$ 2,700.00
800	TON	Furnish & Place Gravel	\$ 8.90	\$ 7,120.00
TOTAL				\$ 63,705.52

Estimated Construction Cost	\$ 63,705.52
Contingency	\$ 0.00
Engineering	\$ 6,200.00
Inspection	\$ 800.00
Testing	\$ 2,500.00

TOTAL ESTIMATED CONSTRUCTION COST
GRADING OFF SITE ----- \$ 73,205.52

TOTAL ESTIMATED CONSTRUCTION COSTS OF OFF SITE CONSTRUCTION WORK
(EXHIBIT C)

TOTAL I	- OFF SITE WATERMAIN	\$ 16,120.00
TOTAL II	- OFF SITE STORM SEWER	\$ 57,659.00
TOTAL III	- OFF SITE STREET PAVING	\$ 24,830.00
TOTAL IV	- OFF SITE GRADING	\$ 73,205.52

TOTAL OF I, II, III & IV Off Site Construction----- \$ 171,814.52



ROLL 261 PAGE 1595

Siouxland Engineering Associates, P.C.

204 W. 21st Street
South Sioux City, Nebraska 68776
402-494-2143

August 18, 1989 (REVISED August 29, 1989)

EXHIBIT D

ON SITE CONSTRUCTION WORK

Actual Unit Costs
with extension of bids of Anderson Construction
and D.A. Davis Co., Inc. on Part I-Eastgate are extended
to include the work to be done on Part II - Eastgate
ON SITE

I. ON SITE GRADING - Site Grading & miscellaneous work of preparing
Part II site for building.

Quantity	Units	Description	\$Units	Estimated Total Cost
	*LS	Clear & Grub & Dispose of material	\$ 63,830.00	\$ 63,830.00
	LS	Strip & Replace Top Soil	\$ 28,600.00	\$ 28,600.00
262,000	CY	Excavate & Place w/M & D	\$.61	\$159,820.00
7,800	MG	Place Water	\$ 2.00	\$ 15,600.00
7,800	MG	Furnish Water	\$.90	\$ 7,020.00
30	AC	Seeding	\$ 123.00	\$ 3,690.00
11	AC	Mulching	\$ 120.00	\$ 1,320.00
30	AC	Fertilizer	\$ 125.00	\$ 3,750.00
1800	LF	Fencing	\$ 1.00	\$ 1,800.00
195	EA	Wooden Posts	\$ 10.00	\$ 1,950.00
12	EA	Fence corner posts	\$ 175.00	\$ 2,100.00
TOTAL				\$289,480.00

* This assumes that the City of Sioux City has acquired a
burning permit and the Contractor will dispose of the
non-burnable debris at an off site private location.

Estimated Construction Cost	\$289,480.00
Contingency	\$ 9,300.00
Engineering	\$ 20,500.00
Inspection	\$ 2,200.00
Testing	\$ 9,300.00

TOTAL ESTIMATED CONSTRUCTION COST ----- \$330,780.00

Add for landfill fees and extensive truck hauling to landfill if this is required by government agencies. This work will be performed under a force account basis with the contractor furnishing hourly rates, men and equipment with an allowance for profit (per City Specifications) and working under that basis -----\$ 68,780.00

II. ON SITE GRADING WORK and appurtant work on Menards Site but, constructed with Walmart Site Development.

159,387 CY Excavate & Place w/M & D
at \$0.61/CY = \$ 97,226.07
LS Proporational quantity
of Clearing & Grubbing
Stripping & Water = \$ 14,195.93
Engineering = \$ 4,220.00

TOTAL CONSTRUCTION COST - ON SITE GRADING
OF MENARD SITE CONSRUCTED WITH WALMART
SITE----- \$115,642.00

III. ON SITE SANITARY SEWER - Construct a sanitary sewer across the site in a easement from Walmart site to east side of Menard site. This line is to serve the subject property.

Quantity	Units	Description	\$Units	Estimated Total Cost
890	LF	8" VCP	\$ 13.00	\$11,570.00
3	EA	Sanitary MH	\$1220.00	\$ 3,660.00
				<u>\$15,230.00</u>

Estimated Construction Cost	\$ 15,230.00
Contingency	\$ 0.00
Engineering	\$ 2,720.00
Inspection	\$ 2,200.00
Testing	\$ 830.00

TOTAL ESTIMATED CONSTRUCTION COST OF
ON SITE SANIARY SEWER----- \$ 20,980.00

ROLL 261 PAGE 1597

Page 3

IV. ON SITE STORM SEWER in conjunction with On Site Grading.

Quantity	Units	Description	SUnits	Estimated Total Cost
295	LF	30" CMP Asphalt Coated	\$ 52.00	\$ 15,340.00
20	LF	18" RCP	\$ 18.00	\$ 360.00
4	EA	Poured In Place MH Inlet	\$1,600.00	\$ 6,400.00
		TOTAL		\$ 22,100.00

Estimated Construction Cost	\$ 22,100.00
Contingency	\$ 600.00
Engineering	\$ 2,960.00
Inspection	\$ 1,600.00
Testing	\$ 830.00

TOTAL ESTIMATED CONSTRUCTION COST
OF ON SITE STORM SEWER----- \$ 28,090.00

TOTAL ESTIMATED CONSTRUCTION COSTS OF

Exhibit D - ON SITE CONSTRUCTION WORK

TOTAL I	- ON SITE GRADING	\$ 330,780.00
TOTAL II	- ON SITE GRADING WORK & APPURTANT WORK	\$ 115,642.00
TOTAL III	- ON SITE SANITARY SEWER	\$ 20,980.00
TOTAL IV	- ON SITE STORM SEWER	\$ 28,090.00

TOTAL OF ON SITE COSTRUCTION WORK (EXHIBIT D)-----\$ 495,492.00

TOTAL OF OFF SITE CONSTRUCTION EXHIBIT C	\$ 171,814.52
TOTAL OF ON SITE CONSTRUCTION EXHIBIT D	\$ 495,492.00

Total of Off Site Construction & On Site Construction
Exhibits C & D respectively----- \$ 667,306.52

Prepared By:

Siouxland Engineering Associates, P.C.
204 W. 21st Street
South Sioux City, NE 68776

By

Leroy V. Satrang, P.E.

LVS/dh

ROLL 261 PAGE 1598
FIRST AMENDMENT TO
DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT made and entered into the 9TH day of JANUARY, 1991, by and between the CITY OF SIOUX CITY, IOWA, hereinafter "City", DIAL REALTY, INC., a Nebraska Corporation, MENARD, INC., a Wisconsin Corporation, and FRED DAVENPORT, JR., hereinafter collectively referred to as "Developers".

WITNESSETH

WHEREAS, City and Developers did on the 14th day of November, 1989, enter into a Development Agreement for the construction of certain improvements, public and private, in the Eastland Urban Renewal Area; and

WHEREAS, City and Developers propose to amend such Agreement to provide for the construction of additional off-site public improvements..

NOW, THEREFORE, in consideration of the promises and mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

- I. EXHIBIT "C" of the Development Agreement is hereby amended to include the following additional off-site improvements.

- A. Additional water main construction was required by the City of Sioux City Utilities Department and Fire Department for fire flow requirements for Wal-Mart and ultimately Menard's also as follows:

Water mains for the Wal-Mart store from west of the west driveway, north to Stone Avenue and then west to the existing City water tower on the corner of Maple Street and Stone Avenue.

- B. Water main for Menard's.

Water main construction along Highway 20 in front of the Menard's store:

Water main construction from the west line of Menard's along Highway 20 to the IDOT fence line or interstate right-of-way fence. To provide water main service for possible future connection to the south side of Highway 20 and to provide possible future water main connection to the northeast or southeast quadrant of the interchange with possible future annexation.

- C. The actual cost of construction of the foregoing off-site improvement is \$77,461.00.

- II. In all other respects the Development Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the City and Developers have caused this First Amendment to Development Agreement to be duly executed as of the date and year first above written.

CITY OF SIOUX CITY, IOWA

ROLL 261 PAGE 1599

DIAL REALTY, INC.

R.E. Scott
MAYOR R.E. SCOTT

ATTEST: Shirley A. Brown
CITY CLERK
SHIRLEY A. BROWN

FRED DAVENPORT, JR.

Fred Davenport, Jr.
FRED DAVENPORT, JR.

Robert L. Welstead
TITLE: Vice President ROBERT L. WELSTEAD

ATTEST: Mary Petersen
TITLE: Asst. Secretary MARY PETERSEN

MENARD, INC.

Marv Prochaska
TITLE: Vice President MARV PROCHASKA

ATTEST: Robert W. Curey
TITLE: Corporate Counsel ROBERT W. CUREY

AGR_MENA.1/LEGAL/LEGAL/2

STATE OF IOWA)
COUNTY OF WOODBURY) : ss.

ROLL 261 IMAGE 1600

On this 27th day of April, A.D. 1992, before me, a Notary Public duly commissioned and qualified in and for said County and State, personally appeared R. E. Scott, Mayor of the City of Sioux City, Iowa, and Shirley Brown, City Clerk of said City, each being to me personally known to be the identical persons and officers named in the foregoing instrument, who executed the same under and by virtue of the authority vested in them by the City Council of said City, and each for himself acknowledged the execution thereof to be his voluntary act and deed for the purposes herein expressed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and notarial seal at Sioux City, Iowa, the day and year last above written.

Jenice Suggett
Notary Public in and for
Woodbury County, Iowa

(WISCONSIN)
STATE OF IOWA)
COUNTY OF WOODBURY) : ss.
EARL CLAIRE

On this 16th day of April, A.D. 1992, before me, the undersigned, a Notary Public in and for said State, personally appeared Marv Prochaska and Vice-President to me personally known, who, being by me duly sworn, did state that they are the Vice-President and Marv Prochaska respectively, of said corporation; that

(no seal has been procured by the said)
(the seal affixed thereto is the seal of said)
corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and that the said Marv Prochaska and Vice-President as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by them voluntarily executed.

Robert W. Clurey
Notary Public, in and for
Said State
my commission is permanent
ROBERT W. CLUREY

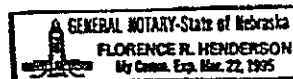
STATE OF IOWA)
COUNTY OF WOODBURY) : ss.

ROLL 261 PAGE 1601

On this 10th day of APRIL, A.D. 1991, before me, the undersigned, a Notary Public in and for said State, personally appeared ROBERT L. WELSTEAD and MARY PETERSEN to me personally known, who, being by me duly sworn, did state that they are the VICE PRESIDENT and ASS'T SECRETARY respectively, of said corporation; that

{no seal has been procured by the said}
(the seal affixed thereto is the seal of said)
corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and that the said ROBERT L. WELSTEAD and MARY PETERSEN as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by them voluntarily executed.

Florence R. Henderson
Notary Public, in and for
Said State



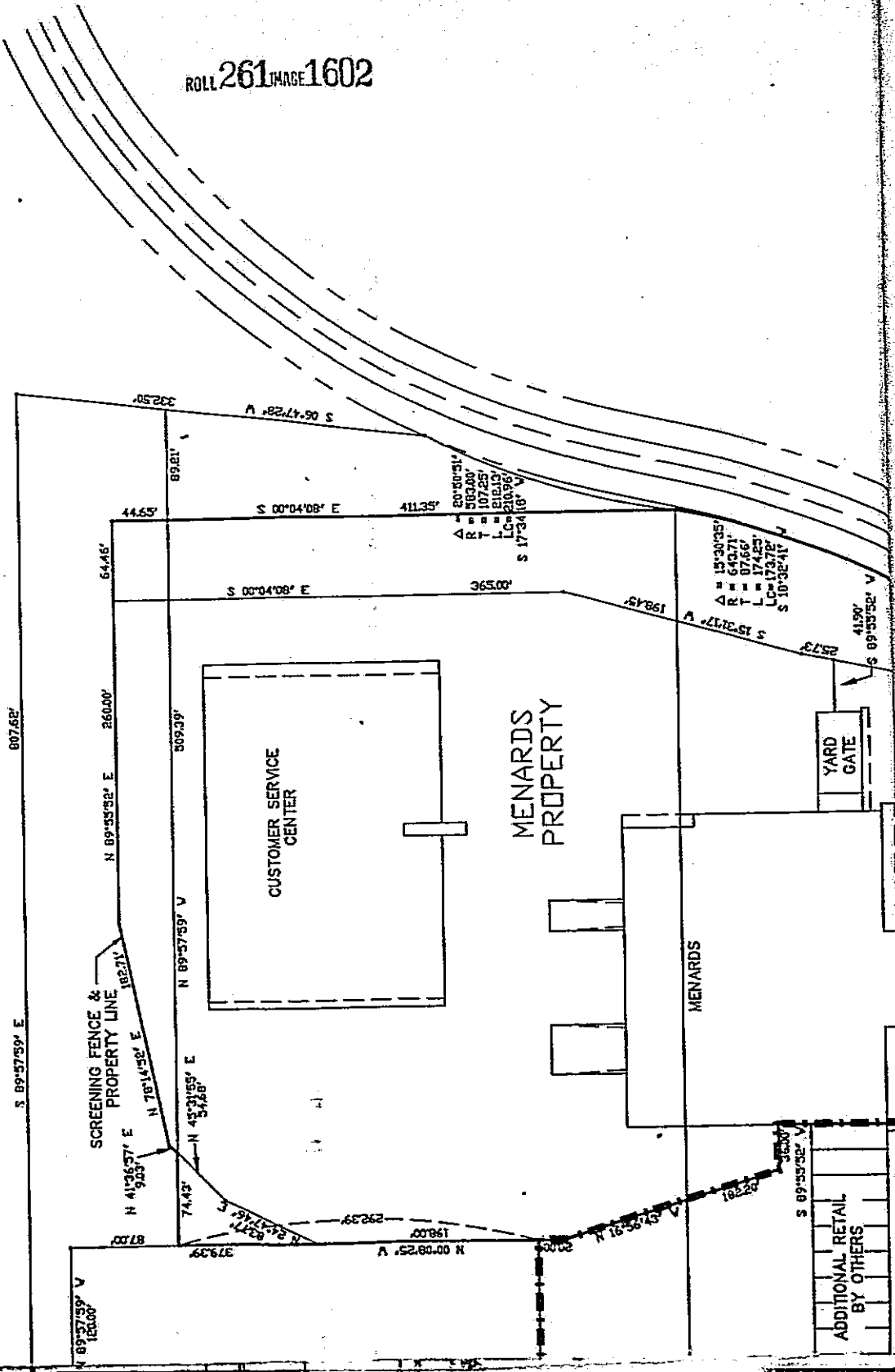
STATE OF IOWA)
COUNTY OF WOODBURY) : ss.

On this 21 day of February, A.D. 1991, before me, the undersigned, a Notary Public in and for said State, personally appeared
Fred Davenport, Jr.

to me known to be the identical persons named in and who executed the foregoing instrument, and acknowledged that they executed the same as their voluntary act and deed.

Norma Townsend
Notary Public, in and for
State of Iowa
5-24-93
NORMA TOWNSEND

ROLL 261 IMAGE 1602



ROLL 261 PAGE 1603

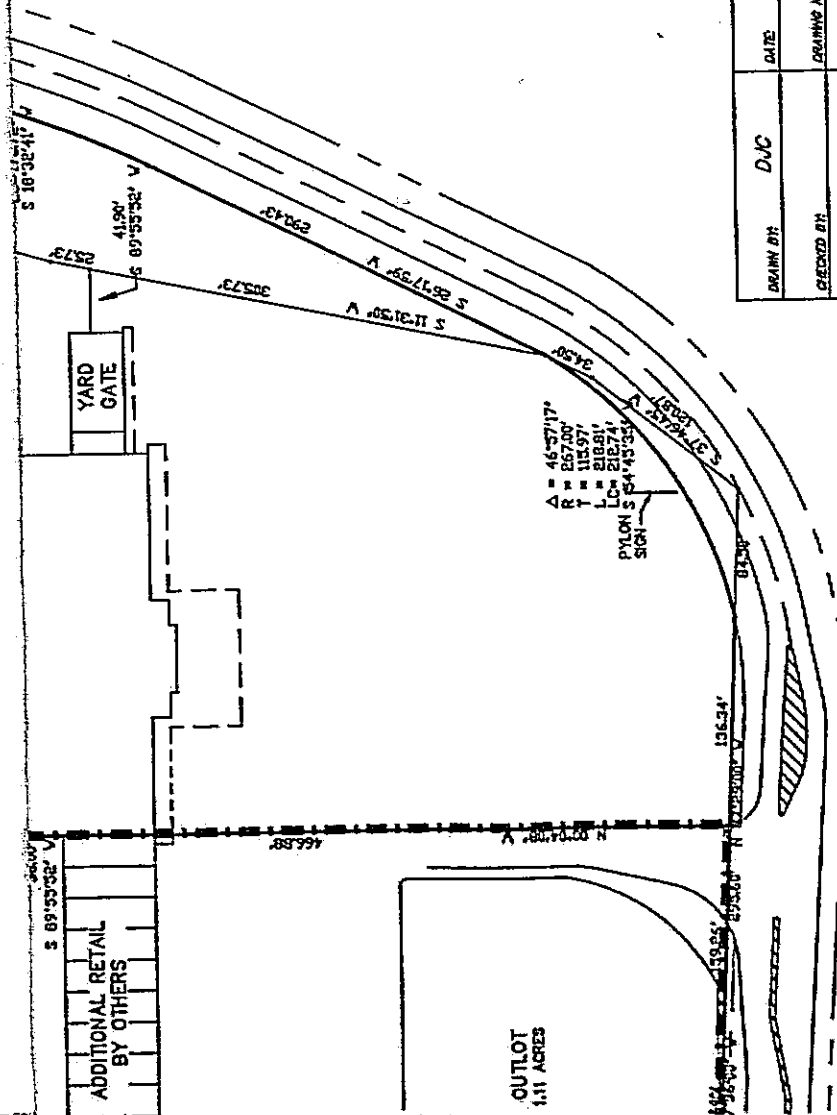
EXHIBIT "H"

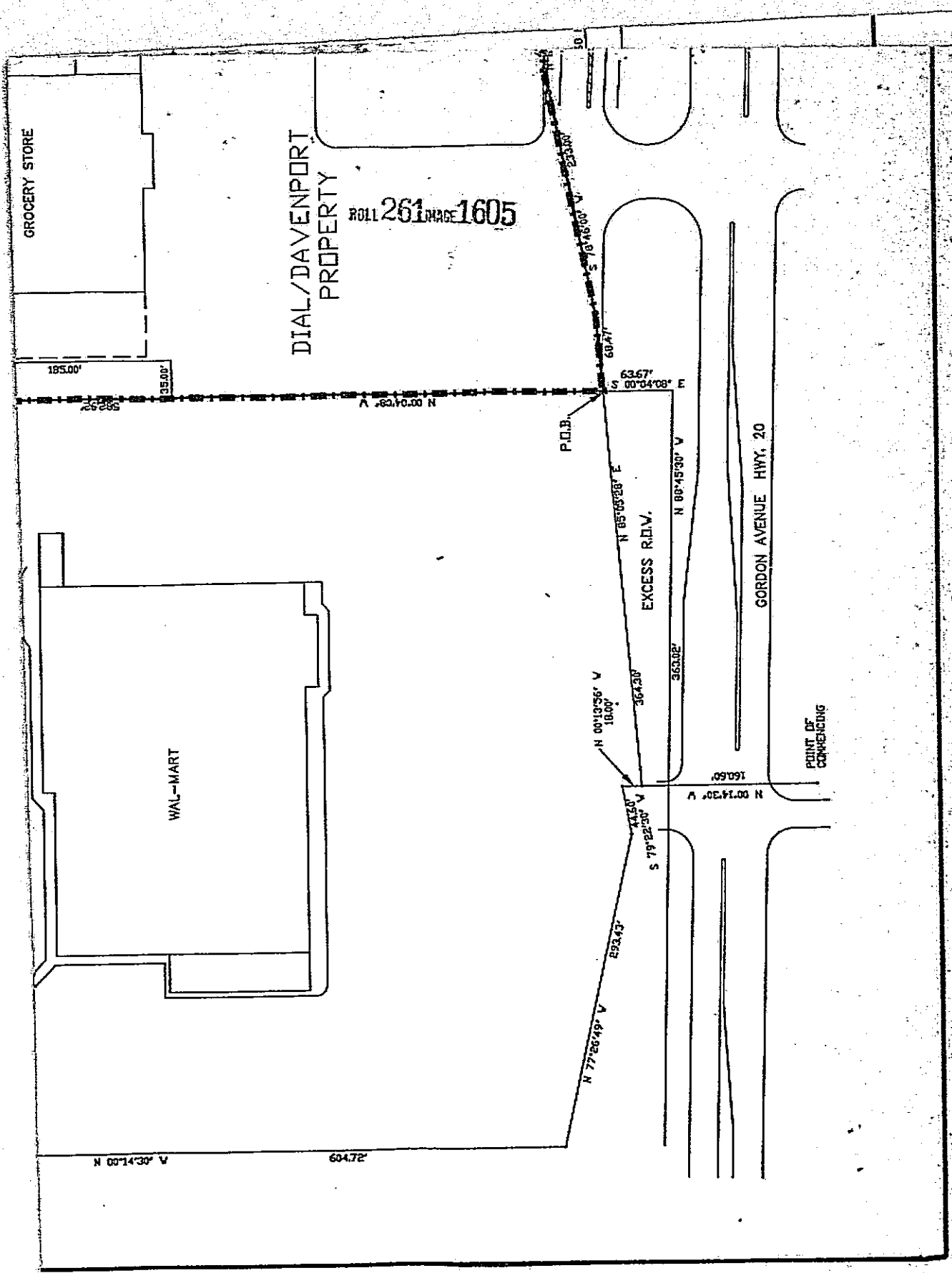
DRABM BH	DVC	DATE	10-16-89
CHECKED BY		DRABM NO.	EXHIBIT A5H
POS AM		SHEET	1 OF 1

SIQUILAND ENGINEERING ASSOCIATES, P.C.
104 V. 21st ST.
SOUTH BEND, IN 46776

304 W. 51st St.
South Bronx, N.Y. 10036

Y.E.A.





DIAL/DAVENPORT
PROPERTY

ROLL 261 PAGE 1605

WAL-MART

GROCERY STORE

EXCESS RDIV.

GORDON AVENUE HWY. 20

POINT OF
BEGINNING

P.O.B.

N 00°14'30" V

604.72'

185.00'

35.00'

252.25'

N 00°14'30" V

N 00°13'56" V
18.00'

364.30'

363.02'

N 85°05'28" E

63.67'

S 00°04'08" E

S 10°45'00" V
253.00'

60.47'

S 79°22'30" V
11.50'

N 77°26'49" V
292.43'

N 00°14'30" V
160.60'

ROLL 261 IMAGE 1606

NOTES

SEAL 1-100

2002

17 02 55 54

11 09:35:52 E 374.7E

11542
N 61.28.23 E

N 00°09'25" W
122.00'

18.50' N 26.55-68 W

GROCERY STORE

WAL-MART

EXCESS R.D.W.

GORDON AVENUE HWY. 20

POINT OF CONSENSUS

ROLL 261 IMAGE 1607

EXHIBIT 'B'

All that part of the Southwest Quarter of the Southwest Fractional Quarter of Section 31, Township 89 North, Range 46 West of the 5th Principal Meridian, Woodbury County, Iowa, and more particularly described as follows: Commencing at the Southwest corner of said Southwest Quarter of the Fractional Southwest Quarter then North 00°14'30" West along the West line of said Southwest Quarter of the Fractional Southwest Quarter for 166.60 feet to a point on the Northernly Right-of-Way of State Route 121 then North 85°05'28" East along said Northernly Right-of-Way for 364.30 feet then North 85°05'28" East for 68.47 feet thence North 78°46'00" East for 233.00 feet thence South 87°36'00" East for 47.00 feet thence South 87°29'00" East for 159.26 feet to the Point of Beginning thence North 00°04'08" West for 466.88 feet thence South 89°55'52" West for 36.00 feet thence North 16°36'43" West for 182.20 feet thence North 00°08'25" West for 20.00 feet thence North 00°08'25" West for 292.39 feet thence South 89°57'59" East for 74.43 feet thence North 41°36'57" East for 9.03 feet thence North 78°14'52" East for 182.71 feet thence North 89°55'52" East for 324.46 feet thence South 00°04'08" East for 44.65 feet thence South 00°04'08" East for 41.35 feet to a point on a 6437' foot radius curve concave Northwesterly thence Southwesterly along said curve for 174.25 feet, the chord bearing of said curve is South 18°32'41" West, and the chord distance is 173.72 feet thence South 26°17'59" West for 290.43 feet to a point on a 267.00 foot radius curve concave Northwesterly thence Southwesterly along said curve for 218.81 feet, the chord bearing of said curve is South 54°45'35" West and the chord distance is 232.74 feet to a point on the Northernly Right-of-Way of State Route 121 thence North 87°29'00" West for 136.34 feet along said Northernly Right-of-Way to the Point of Beginning containing 466,416 sq. ft. Subject to restrictive covenants or easements of record, if any.



SCALE 1"=100'

N 89°55'52" E

374.72'

N 87°29'00" E

600.21'

N 89°55'52" E

N 89°55'52" E

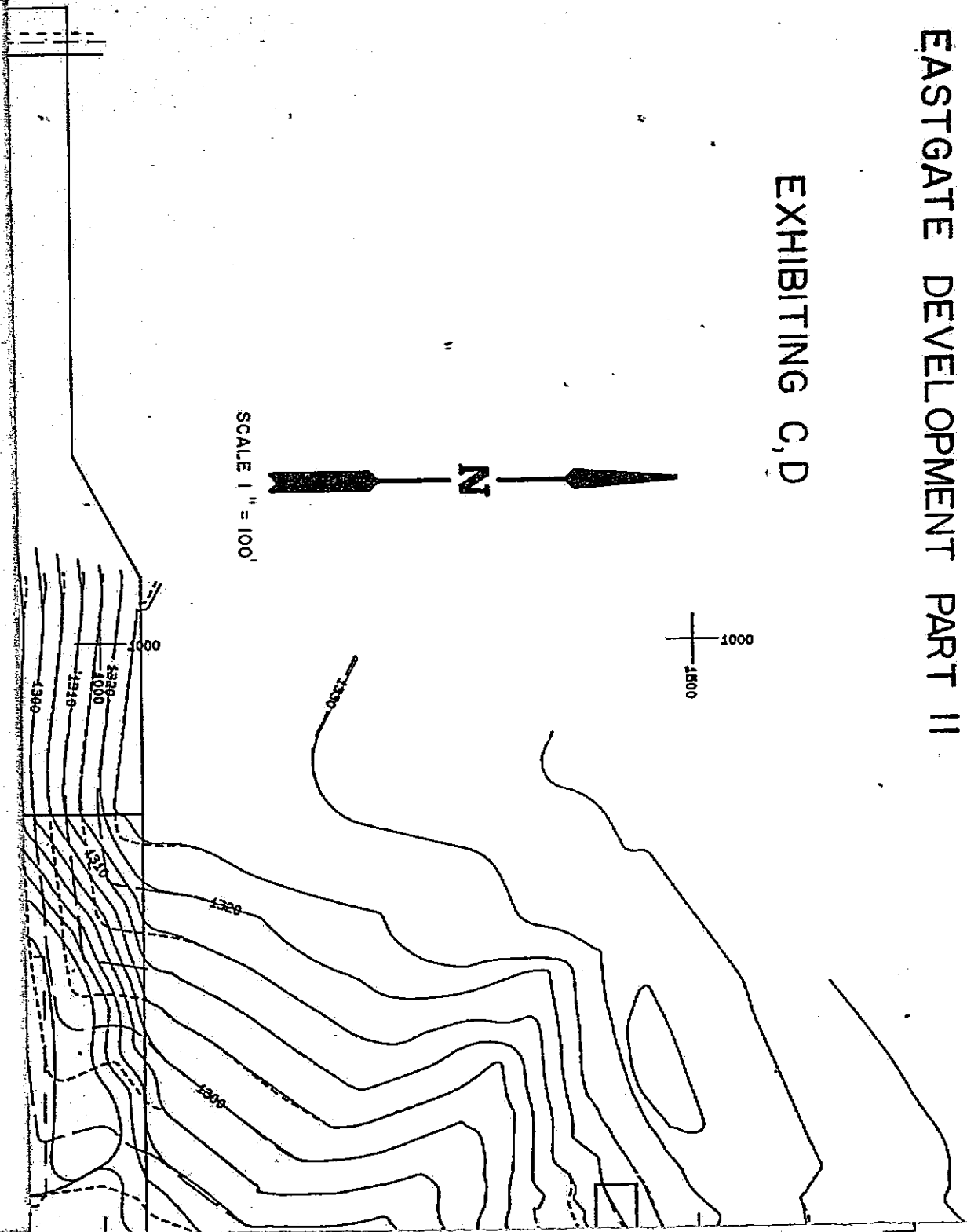
432.45'

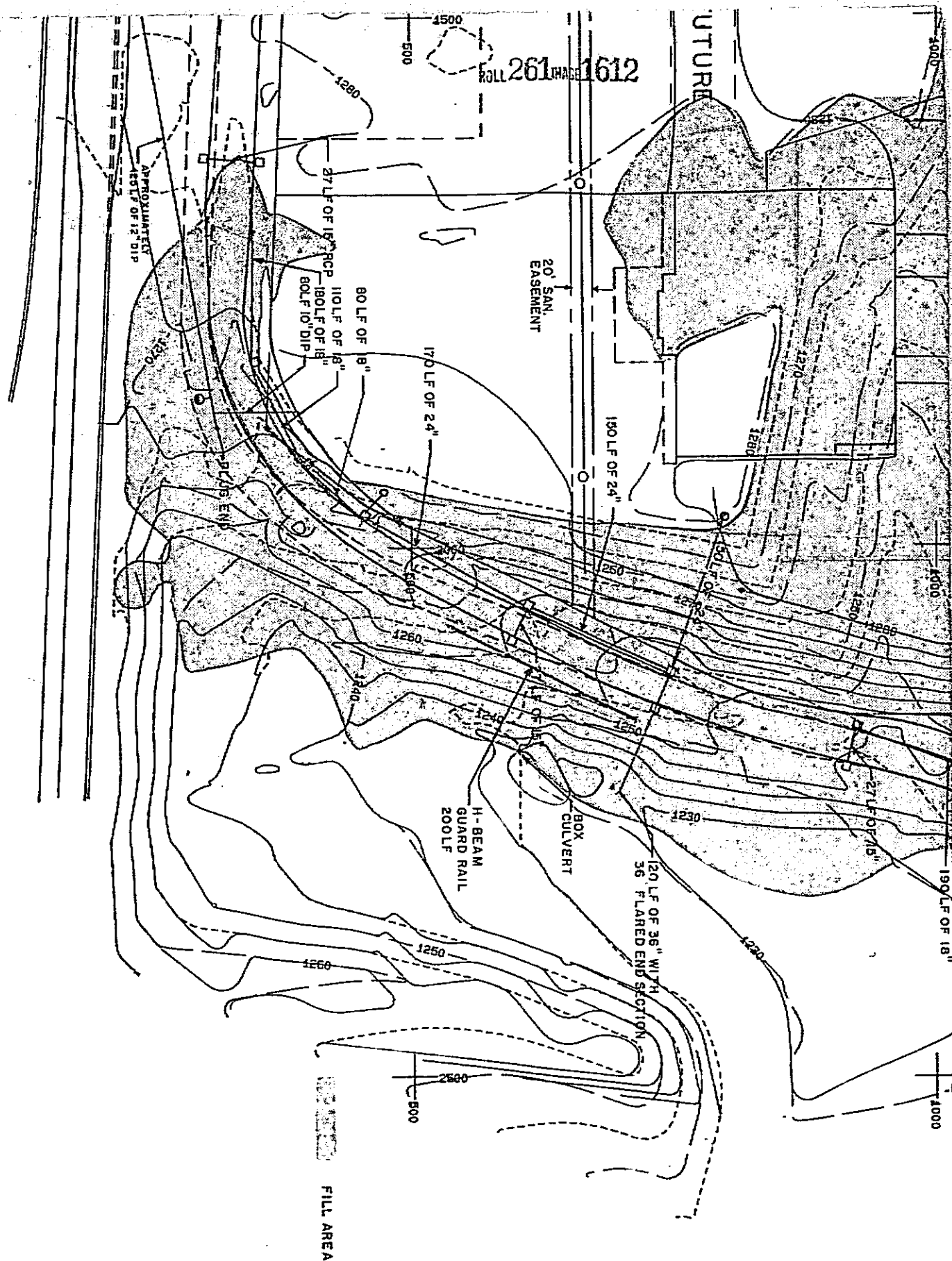
EXHIBIT
466,416 sq.
1076 ac.

ROLL 261 IMAGE 1611

EASTGATE DEVELOPMENT PART II

EXHIBITING C,D

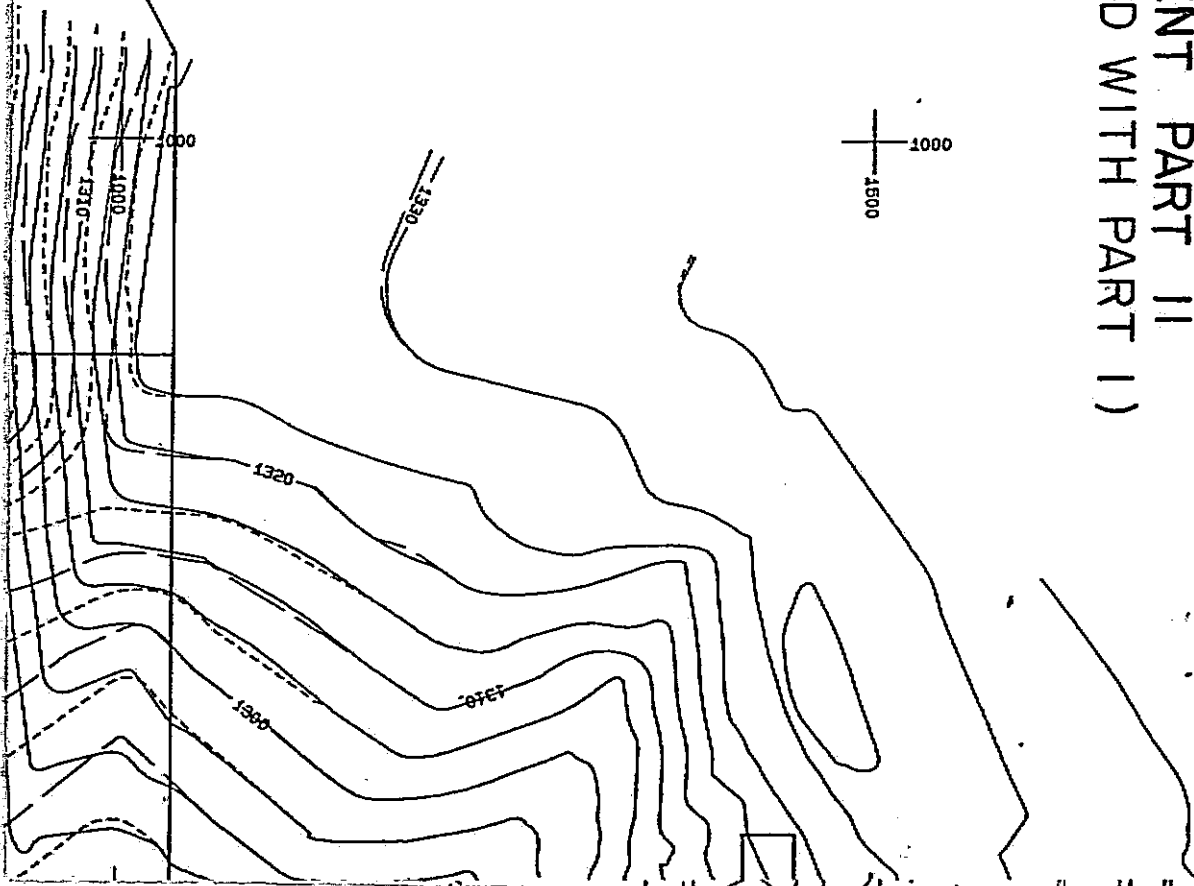
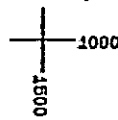
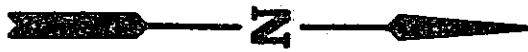




ROLL 261 IMAGE 1615

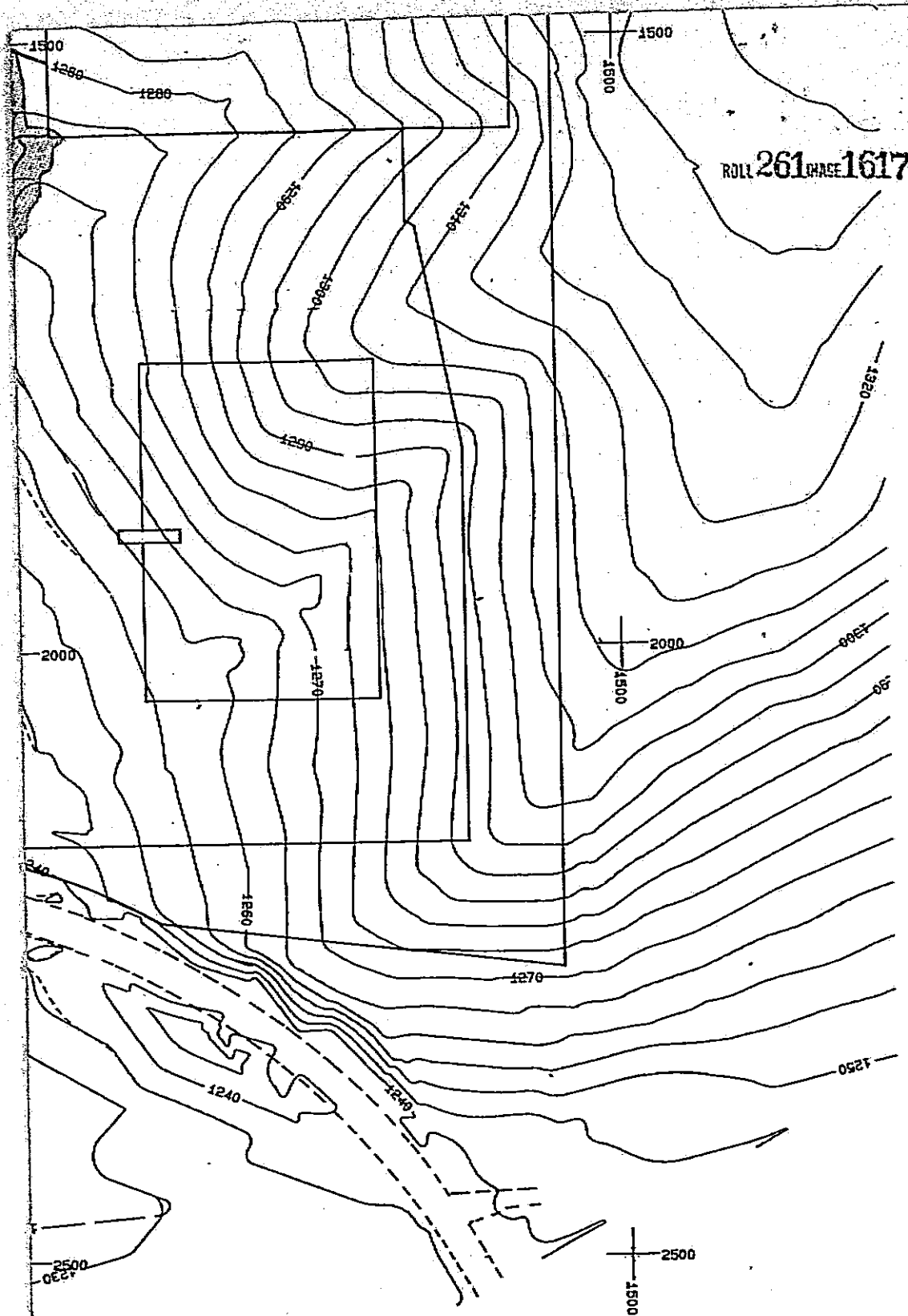
EASTGATE DEVELOPMENT PART II
(PORTION CONSTRUCTED WITH PART I)
PART OF EXHIBIT D

SCALE 1" = 100'

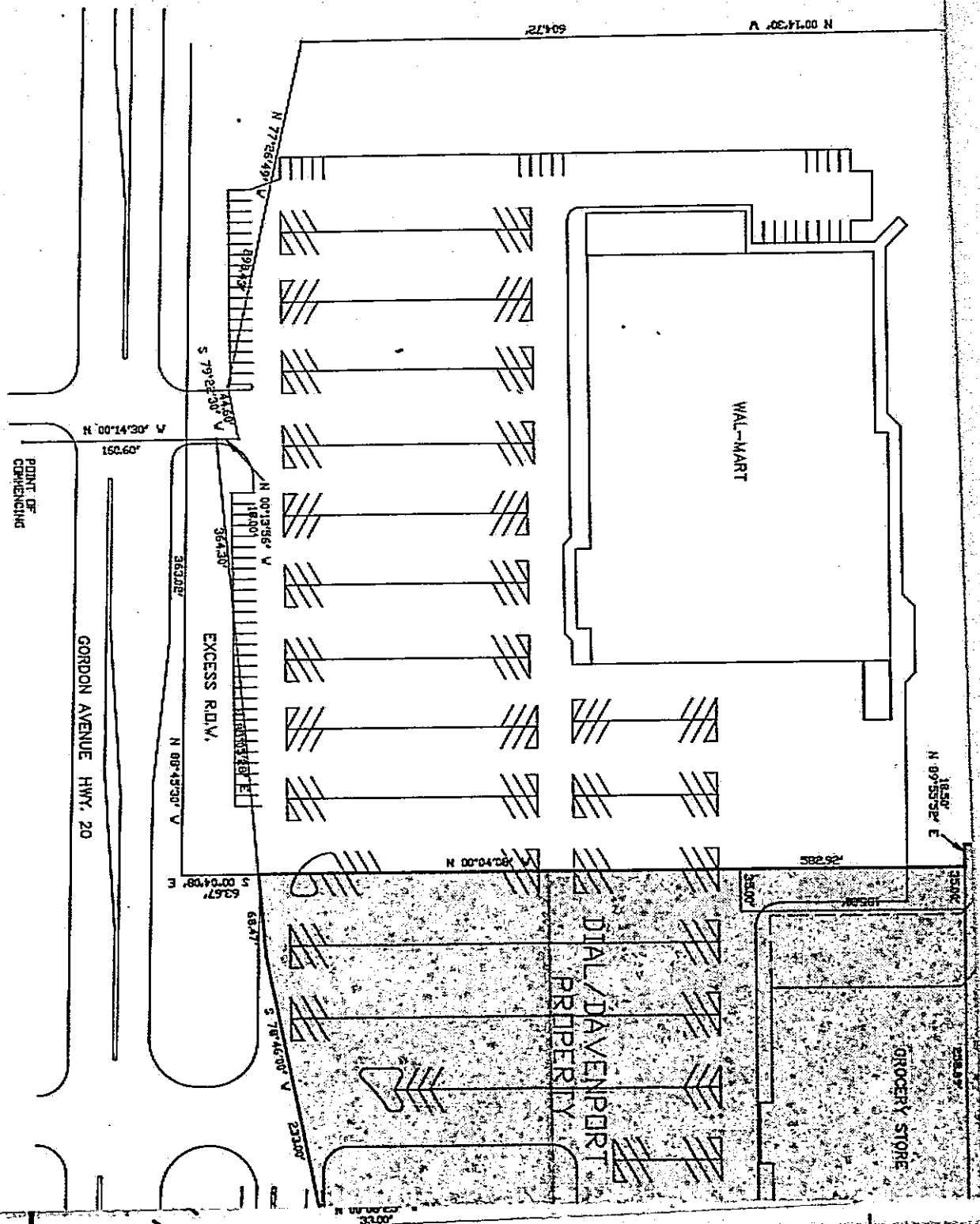




FILL AREA



ROLL 261 IMAGE 1618



ROLL 261 PAGE 1619



SCALE 1"=100'

N 89°55'32" E 374.72'

N 15°42' E 100.00'

200.00'

N 89°55'32" E 410.00'

N 89°55'32" E 100.00'

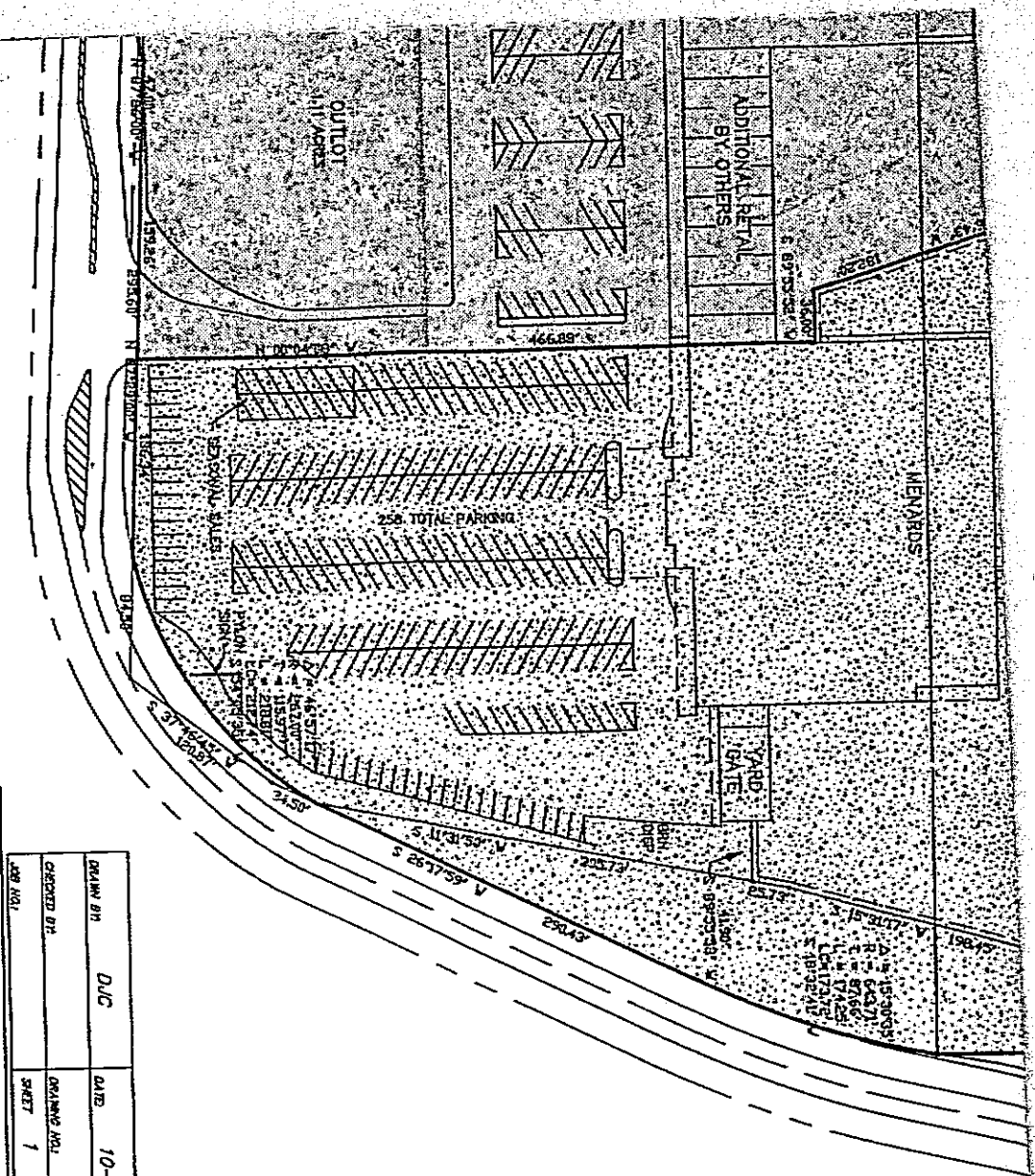
N 89°55'32" E 18.50'

MENARDS
SIOUX CITY

EXHIBIT I
PROPOSED DIAL/DAVENPORT
SITE PLAN

EXHIBIT II
PROPOSED MENARDS
SITE PLAN

ROLL 261 IMAGE 1620



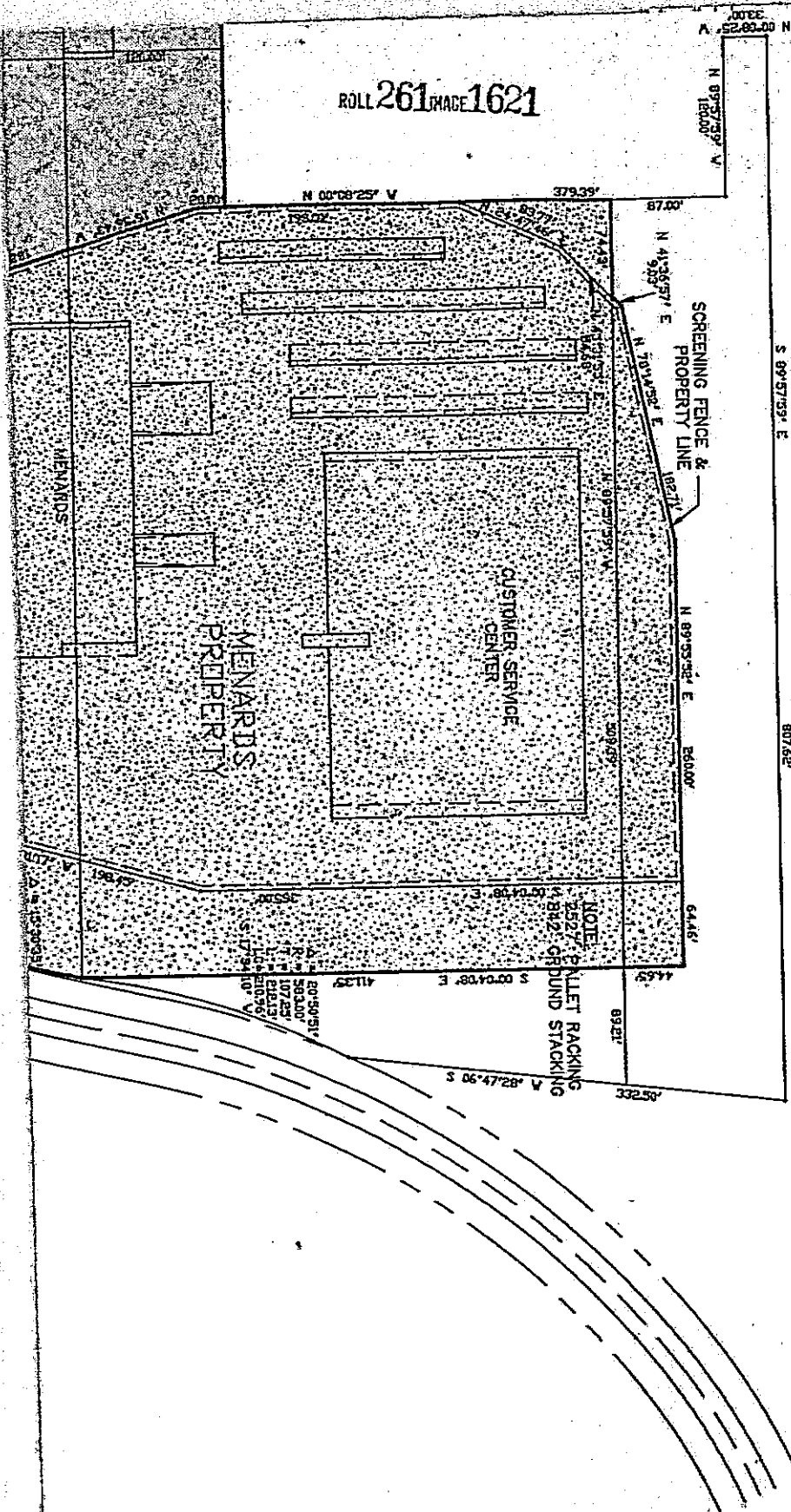
DRINK B/T	D/C	DATE	10-13-89
CHECKED BY:		DRINKING HOU	SITE
DOB HOU		SHEET	1 of 1

33

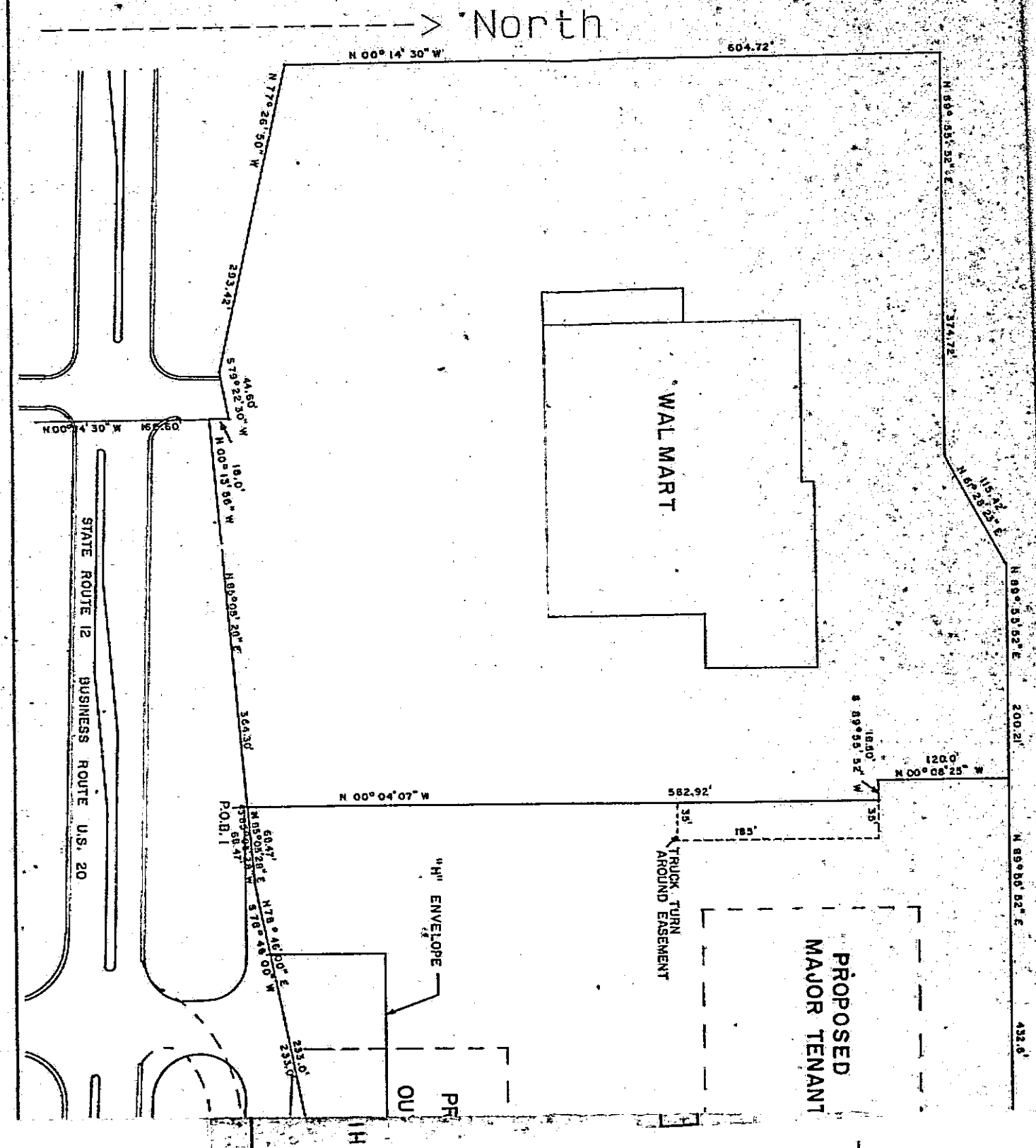
STOUTLAND ENGINEERING ASSOCIATES, P.C.
SOUTH
PO BOX 5116
402-494-2143
PO BOX 5116
SOUTH
402-494-2143

SITE IA

ROLL 261 IMAGE 1621



> North



ROLL 261 IMAGE 1623

SIGN LOCATION MAP

SIGN "H"

This sign shall not exceed 200 square feet nor be taller than 55 feet. It shall be located within the sign envelope shown on the attached site plan marked "Sign A-B Envelope". Sign "A-B" shall be limited to identifying the premises as provided in section 4.36.160. (2) (a) of the Municipal Code.

SIGN "B"

This sign shall not exceed 200 square feet nor be taller than 55 feet. It shall be located within the sign envelope shown on the attached site plan marked "Sign B Envelope". Sign "B" shall be limited to identifying the principal or major occupant of the real estate described in exhibit "B".

115.45'
N 89° 53' 02" E

200.21'

432.6'

N 89° 00' 02" E

432.6'

33.0'
N 00° 08' 25" W

EX

