

STATE OF IOWA

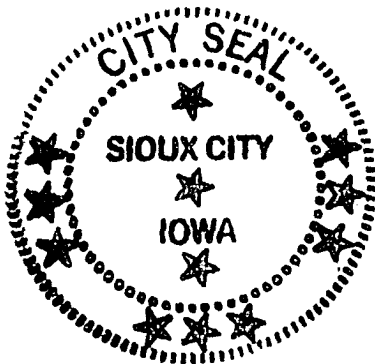
CITY OF SIOUX CITY

Woodbury County

Office of the City Clerk

I, Robert K. Padmore, City Clerk of the City of Sioux City and City Clerk of the City Council thereof, and as such, having charge of and in my possession all the records and documents pertaining to said office now remaining therein, do hereby certify that it appears from such records that the foregoing is a true and correct copy of the Resolution No. 2000-9699 adopted by the City Council of the City on the 6th day of November, 2000 upon the call of yeas and nays thereof duly had and recorded.

Dated at Sioux City, Iowa this 13th day of November, 2000.



(SEAL)

ROBERT K. PADMORE
CITY CLERK

7652

Doc. No. _____
WOODBURY COUNTY, IOWA
Filed for Record

NOV 16 2000

Time 10:30 AM Fee \$ 41.00
PATRICK F. GILL, Auditor & Recorder
By Summery Designee

RESOLUTION NO. 2000-009699
with attachments

RESOLUTION APPROVING AND ACCEPTING AN EASEMENT FOR INGRESS AND EGRESS PURPOSES IN CONSIDERATION OF MUTUAL BENEFITS FROM JAMES C. JOHNSON AND LARRY L. BOOK, CO-TRUSTEES OF THE FRED & MARTHA GRANDCHILD TRUST DATED DECEMBER 30, 1992 IN CONNECTION WITH THE 158TH STREET IMPROVEMENTS AND RESCINDING RESOLUTION NO. 2000-9560. (GORDON DRIVE AND 158TH STREET)

WHEREAS, in connection with the 158th Street Improvements it is necessary that the City acquire an easement for ingress and egress purposes over the following described properties owned by James C. Johnson and Larry L. Book, Co-trustees of the Fred & Martha Grandchild Trust dated December 30, 1992:

Parcels of land in Section 31, Township 89 North, Range 46 West and more fully described in the attached permanent utility easements; and

WHEREAS, the City Council is advised and does believe that it is in the best interest of the City of Sioux City that the easement for ingress and egress purposes executed by James C. Johnson and Larry L. Book, Co-trustees of the Fred & Martha Grandchild Trust dated December 30, 1992 should be approved as to form and content; and

WHEREAS, on September 25, 2000, the City Council passed and approved Resolution No. 2000-9560 approving and accepting permanent utility easements for the above described properties; and

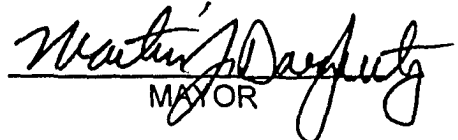
WHEREAS, said resolution incorrectly referenced said easement as a permanent utility easement and not an easement for ingress and egress purposes and should be rescinded.

NOW, THEREFORE, BE, AND IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF SIOUX CITY, IOWA, that the easement for ingress and egress purposes executed by James C. Johnson and Larry L. Book, Co-trustees of the Fred & Martha Grandchild Trust dated December 30, 1992, a copy of which is attached hereto and by this reference made a part hereof, be and the same is hereby approved as to form and content.

BE IT FURTHER RESOLVED that said easement for ingress and egress purposes is accepted on behalf of the City of Sioux City, Iowa.

BE IT FURTHER RESOLVED that Resolution No. 2000-9560 passed and approved September 25, 2000, be and the same is hereby rescinded.

PASSED & APPROVED: 11-6-00


MAYOR

ATTEST: 
CITY CLERK

Preparer

Information	<u>Cody M. McCullough,</u>	<u>614 Pierce Street,</u>	<u>Sioux City</u>	<u>(712) 277-4561</u>
	Individual's Name	Street Address	City	Phone

Crary, Huff, Inkster, Sheehan, Ringgenberg, Hartnett, Storm & Jensen, P.C. ISBA # 02554

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (hereinafter "Agreement") is made as of this 25th day of September, 2000, by and between *James C. Johnson and Larry L. Book, Co-Trustees of the Fred and Martha Grandchild Trust dated December 30, 1992*, whose address for the purpose of this Agreement is 1104 6th Street, Sioux City, IA 51102 (hereinafter the "Grantors") and *The City of Sioux City, Iowa*, whose address for the purpose of this Agreement is 405 6th Street, Suite 511, Sioux City, Iowa 51102 (hereinafter "Grantee").

WITNESSETH:

WHEREAS, Grantors are the owners of certain tracts of land located in the City of Sioux City, County of Woodbury, State of Iowa, as more particularly described in Attachment A, attached hereto and made a part hereof and referenced within said Attachment A as "Easement Tract 3-A" and "Easement Tract 3-B".

WHEREAS, Grantors and Grantee entered into a Development Agreement on the 5th day of March, 2000, wherein the Grantors agreed to grant to the Grantee an access easement in connection with the re-alignment of 158th Street.

WHEREAS, Grantors intend to grant to Grantee for the use by the public a non-exclusive easement for ingress and egress over the area identified in Attachment A as "Easement Tract 3-A" and "Easement Tract 3-B", attached hereto and made a part hereof (hereinafter "Easement Area").

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

1. Easement.

- A. Grantors hereby grant to Grantee for the use by the public a perpetual non-exclusive easement upon the Easement Area for passage and use by vehicles and pedestrians for ingress and egress to and from 158th Street as 158th Street is shown on Attachment A.

- B. The easement granted herein shall be for the benefit of, but not restricted solely to, Grantee.
- C. There shall be, without limitation, no walls, fences, or barriers of any kind constructed on the Easement Area by Grantee or Grantors.
- D. Grantee's use of the Easement Area, such as, without limitation, access, ingress, and egress shall not interfere in any manner with the use of any of the parcels which adjoin the Easement Area or benefit from the easement granted herein and are located within what is commonly referred to as the Eastgate Shopping Center. Grantee further agrees to not interfere in any manner with the free access, movement, and flow of persons or vehicle traffic or customers, personnel, contractors, or deliveries to and from the any of the parcels which adjoin the Easement Area or benefit from the easement granted herein and are located within what is commonly referred to as the Eastgate Shopping Center.
- E. Grantors reserve the right to assign all or any portion of its interest in this Agreement.
- F. Grantee shall only use the Easement Area as set forth within this Agreement and shall not use the same for any other purpose.
- G. Grantors and Grantee shall have the right to obtain restraining orders, injunctions, or other legal process in order to enjoin any such activities not approved or consented to as set forth herein.

2. Term of Agreement. This Agreement shall be effective as of the date set forth on Page 1 hereof and shall be perpetual.

3. Maintenance, Replacement, Repair. Grantors shall, at their sole cost and expense, maintain, repair, including replacement, if needed, the Easement Area so as to keep the Easement Area at all times in a safe, clean, functional and serviceable condition, pleasing in appearance, good order and repair.

4. Integration and Severability. This Agreement embodies the entire agreement and understanding between the parties and supersedes all prior agreements and understandings with respect thereof. In the event one or more of the obligations of the parties shall be invalid, illegal or unenforceable,

the validity, legality and enforceability of the remaining obligations of the parties shall not in any way be affected or impaired.

5. Recording. This Agreement shall be recorded by Grantee, at its sole expense, in the Woodbury County, Iowa records and the terms and conditions herein contained shall run with the land as to the Agreement and the easements as set forth herein shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

6. Amendment of the Agreement. This Agreement may not be amended or modified at any time unless in writing and signed by all the parties.

7. Subordination. This Agreement is subject to and subordinate to any easements, documents, and all other matters of record. Any mortgage or deed of trust hereafter placed against the Easement Area shall be subject and subordinate to the terms of this Agreement, and any party foreclosing any such mortgage or deed of trust, or acquiring title by deed in lieu of foreclosure or trustee's sale, shall acquire title subject to this Agreement.

8. Headings. The section "Headings" in this Agreement are for convenience only and shall in no way define or limit the scope or content of this Agreement nor shall the same be considered in any construction or interpretation of this Agreement or any portion thereof.

9. No Partnership or Joint Venture. Nothing in this Agreement shall be construed to create a joint venture nor make the Parties partners nor render any of the Parties liable for the debts or obligation of the other.

10. Binding Effect. All provisions, covenants, and easements contained herein shall be binding upon, inure to the benefit of, and be enforceable by, the respective successors and assigns of the parties and shall run with the land as to the easement granted herein.

11. Notices. Notices required or contemplated hereunder shall be in writing to the addresses set forth on page 1 and deemed given (a) when delivered personally, or (b) on the day said communication is received or refused to be received when delivered by the U.S. mail, registered or certified mail, return receipt requested, postage prepaid, or (c) the next business day after delivery of said notice to a nationally recognized overnight courier service, or (d) the next business day after said notice is sent via facsimile.

Dated as above first written.

CITY OF SIOUX CITY, IOWA

By: Martin J. Dougherty
Martin J. Dougherty, Mayor

Attest: Robert K. Padmore
Robert K. Padmore, City Clerk

THE FRED AND MARTHA GRANDCHILD
TRUST DATED DECEMBER 30, 1992

By: James C. Johnson
James C. Johnson, Co-Trustee

By: Larry Book
Larry Book, Co-Trustee

ACKNOWLEDGMENTS

STATE OF IOWA)
) ss:
 COUNTY OF WOODBURY)

This instrument was acknowledged before me on the 25th day of September, 2000, by Martin J. Dougherty, as Mayor of the City of Sioux City.



Stacey McIntire
 Notary Public

STATE OF IOWA)
) ss:
 COUNTY OF WOODBURY)

This instrument was acknowledged before me on the 25th day of September, 2000, by Robert K. Padmore, as Clerk of the City of Sioux City.



Stacey McIntire
 Notary Public

STATE OF IOWA)
) ss:
 COUNTY OF WOODBURY)

This instrument was acknowledged before me on the 5th day of September, 2000, by James C. Johnson and Larry Book, as Co-Trustees of the Fred and Martha Grandchild Trust dated December 30, 1992.



Patricia S. Brockhaus
 Notary Public

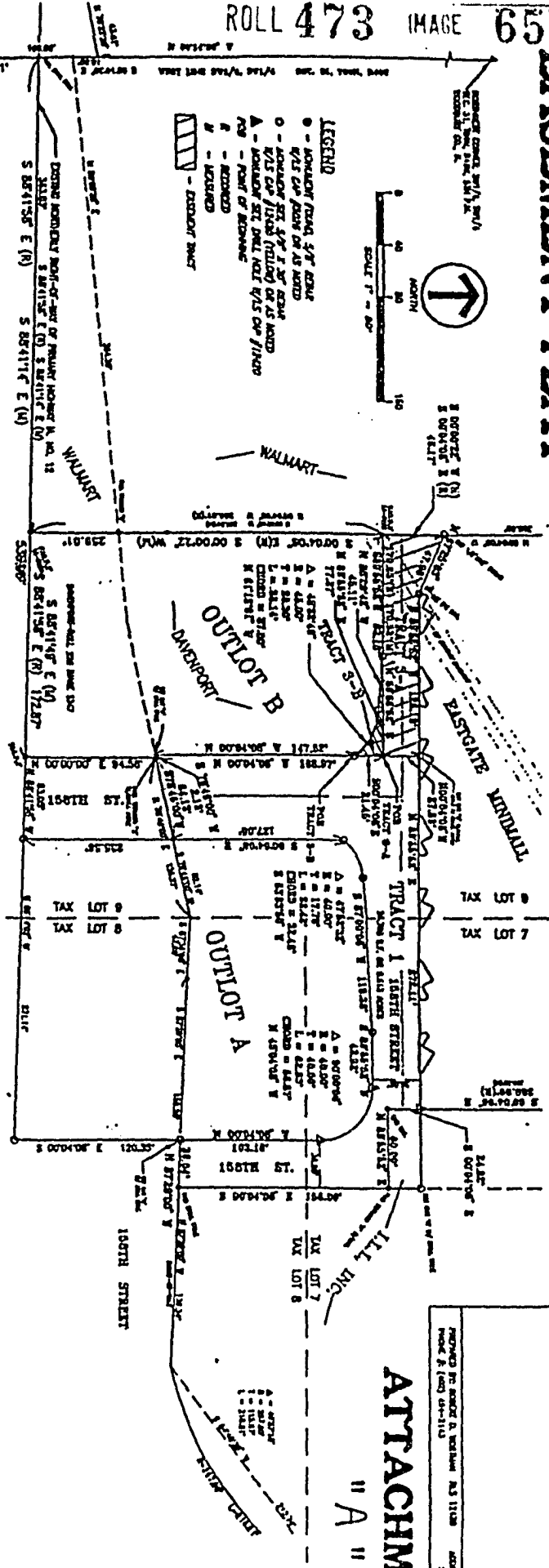
EASEMENT PLAT

ROLL 473 IMAGE 65

PLAT OF SURVEY OF EASEMENT TRACTS FOR TRUCK ACCESS TO WALMART

APPROVED FOR RECORD BY NOTARIAL PUBLIC AS 11:00 AM APRIL 11, 2000

ATTACHMENT "A"



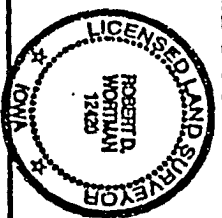
ROW	4-10-2000
ROW	EASTGATE PLAT
ROW	89-800.04

SURVEYOR NOTES

1) BEARINGS BASED ON THE WEST LINE OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 31, T89N, R40W, 5TH P.M. AS BEING NORTH 00°14'30" WEST

CERTIFICATION PLAT OF SURVEY

I HEREBY CERTIFY THAT THIS LAND SURVEYING DOCUMENT WAS PREPARED AND THE RELATED SURVEY WORK WAS PERFORMED BY ME OR UNDER MY DIRECT PERSONAL SUPERVISION AND THAT I AM A DULY LICENSED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF IOWA.
Robert D. Wortham 5-18-2000
ROBERT D. WORTHAM PLS 12420 DATE
LICENSE RENEWAL DATE DEC. 31, 2001
PLACES COVERED BY THIS SEAL: 1 of 1



LEGAL DESCRIPTION OF EASEMENT TRACT 3-B

A tract of land being part of the Southwest One-Quarter of Section 31, Township 89 North, Range 46 West of the 5th Principal Meridian to the City of Sioux City, Woodbury County, Iowa, with said part being also part of Tax Lot 9, and being more particularly described as follows:
Commencing at the Southwest corner of the Southwest One-Quarter of Section 31, Township 89 North, Range 46 West; thence North 00 degrees 14 minutes 30 seconds West, along the West line of the Southwest One-Quarter of Section 31, a distance of 136.01 feet to a point on the Northern Right-of-Way line of Primary Highway 1A, No. 12 (Gordon Drive); thence South 89 degrees 41 minutes 58 seconds East, along said Northern Right-of-Way line of Primary Highway 1A, No. 12 (Gordon Drive), a distance of 535.90 feet; thence North 00 degrees 14 minutes 30 seconds East, a distance of 84.58 feet; thence South 78 degrees 46 minutes 00 seconds West, a distance of 2.13 feet; thence North 00 degrees 04 minutes 08 seconds West, a distance of 147.52 feet to the POINT OF BEGINNING and the beginning of a curve concave to the Southwest having a Radius of 43.00 feet through a Central Angle of 48 degrees 32 minutes 42 seconds and a chord of 37.00 feet bearing North 61 degrees 13 minutes 13 seconds East; thence North 85 degrees 28 minutes 42 seconds West, a distance of 45.11 feet; thence North 89 degrees 55 minutes 52 seconds East, a distance of 77.37 feet; thence South 00 degrees 04 minutes 08 seconds East, a distance of 21.45 feet to the Point of Beginning; and containing 388 square feet or 0.009 acres, more or less.

LEGAL DESCRIPTION OF EASEMENT TRACT 3-A

A tract of land being part of the Southwest One-Quarter of Section 31, Township 89 North, Range 46 West of the 5th Principal Meridian to the City of Sioux City, Woodbury County, Iowa, with said part being also part of Tax Lot 9, and being more particularly described as follows:
Commencing at the Southwest corner of the Southwest One-Quarter of Section 31, Township 89 North, Range 46 West; thence North 00 degrees 14 minutes 30 seconds West, along the West line of the Southwest One-Quarter of Section 31, a distance of 136.01 feet to a point on the Northern Right-of-Way line of Primary Highway 1A, No. 12 (Gordon Drive); thence South 89 degrees 41 minutes 58 seconds East, along said Northern Right-of-Way line of Primary Highway 1A, No. 12 (Gordon Drive), a distance of 535.90 feet; thence North 00 degrees 14 minutes 30 seconds East, a distance of 84.58 feet; thence South 78 degrees 46 minutes 00 seconds West, a distance of 2.13 feet; thence North 00 degrees 04 minutes 08 seconds West, a distance of 147.52 feet to the POINT OF BEGINNING; thence continuing North 00 degrees 04 minutes 08 seconds West, a distance of 27.69 feet; thence South 89 degrees 55 minutes 52 seconds West, a distance of 126.19 feet; thence North 67 degrees 25 minutes 03 seconds West, a distance of 47.88 feet; thence South 00 degrees 04 minutes 08 seconds East, a distance of 46.17 feet; thence North 89 degrees 55 minutes 52 seconds East, a distance of 170.65 feet (170.53 feet measured) to the Point of Beginning; and containing 5147 square feet or 0.116 acres, more or less.