

Filed for Record the 9 day of Dec
A.D., 1988 at 2:38 o'clock P.M.

Partnership By W4 M Properties
TO
the Public

Cassidy
COUNTY RECORDER

RECORD FEES 40.00

Doc 2631

RECORD 462

PAGE 642

DECLARATION OF RESTRICTIONS

OTTUMWA, IOWA

THIS Declaration of Restrictions is made and entered into as of the 1
21 day of July, 1988, by OTTUMWA SQUARE ASSOCIATES, an Ohio
LIMITED PARTNERSHIP
limited partnership, hereafter referred to as "Declarant."

WHEREAS, Declarant is the owner of that property more particularly
described in Exhibit A attached hereto and incorporated by reference herein,
which property is located in or near the the City of Ottumwa, Wapello County,
Iowa, which described property is hereafter referred to as the "Shopping Center
Property;"

WHEREAS, Declarant is also the owner of that property more particularly
described in Exhibit B, attached hereto and incorporated by reference herein,
which property is hereafter referred to as "Outparcels A, B and C;" and

WHEREAS, Declarant desires to establish certain restrictions upon
Outparcels A, B and C
~~Outparcel A~~ for the benefit of the Shopping Center Property;

NOW, THEREFORE, Declarant for itself, its successors and assigns does
hereby agree that Outparcels A, B and C shall be subject to and shall be used in
conformance with the following covenants and agreements:

1. Except with the prior written approval of Declarant, no building
or structure shall be constructed or maintained on Outparcels A, B and C unless such
building or structure shall conform to the following covenants and
requirements:

A. There shall be only one (1) building on Outparcels B and C,
and one (1) subdivided building on Outparcel A;

B. Any such building shall not exceed twenty-five (25') feet nor
be more than one (1) story in height;

C. Only one operation or business shall be allowed on
Outparcels B and C;

D. The buildings constructed and maintained on Outparcels A, B
and C shall not exceed the building sizes noted:

Outparcel A - 12,500 square feet

Outparcel B - 4,000 square feet

Outparcel C - 4,500 square feet

and each shall have parking ratios not falling below 5.5 cars per 1,000

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D. Any rooftop equipment located on the top of any such building shall be screened in a manner satisfactory to Declarant;

E. No rooftop sign shall be erected or maintained with respect to any such building;

G. No freestanding identification sign may be erected on the Outparcels A, B and C without approval of the Declarant, and in no event shall such freestanding identification sign exceed the height of the building on the Outparcel or block the visibility of the Wal-Mart Store without the written approval of same by Wal-Mart ^{Properties} Stores, Inc. during such time such entity occupies and conducts business in its space in the Shopping Center Property. Notwithstanding the foregoing, there may be erected entrance-exit signs to facilitate the free flow of traffic, which entrance-exit signs shall be of a monument type, not to exceed three feet, three inches (3'3") in height, the type and location of such signs to be approved by Declarant.

2. No improvements shall be constructed, erected, expanded or altered on Outparcels A, B and C until the plans for the same (including site layout, exterior appearance and parking) have been approved in writing by Declarant.

3. In developing and using Outparcels A, B and C, the owner(s) of such Outparcels A, B and C shall provide and maintain a minimum ratio of five and one-half (5.5) car spaces per one thousand (1,000) square feet of Floor Area on such Outparcels A, B and C. The term "Floor Area" as used herein shall mean, "the area of square feet of floor space covered and enclosed within the building, whether rented or rentable or not, measured to the outside of the exterior walls of the building, but not including loading docks, delivery passages, exit and/or service corridors, public restrooms, enclosures used exclusively for mechanical equipment, nonstructural mezzanines or any entrance vestibule."

4. Outparcels A, B and C shall be kept neat, orderly, planted in grass and trimmed until improved and constructed. In addition, Declarant shall cause landscaping areas to be added and maintained in conjunction with any building or other improvements constructed on Outparcels A, B and C.

5. Except with the prior written consent of Declarant, any building, structure or improvements on Outparcels A, B and C shall be used for retail purposes only (banks, savings and loans, and other financial institutions

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shall be considered retail). Except with the prior written consent of Declarant, no such building, structure or improvement on Outparcels A, B and C may be used as a theater, night club, bowling alley, health spa, cafeteria (provided that food restaurants serving cafeteria style (e.g. Wendy's) shall not be restricted hereby), billiard parlor or other place of recreation or amusement, or as a business serving or selling alcoholic beverages (unless the sale or service of alcoholic beverages is incidental to such business, such as a restaurant serving alcoholic beverages) or as a discount department store or a variety, general or "dollar" store.

6. Any of the foregoing restrictions may be waived, amended, modified, released or terminated at any time and from time to time by Declarant; provided, that Declarant shall not waive, amend, modify, release or terminate this Agreement without the prior written consent of Wal-Mart Properties Stores, Inc., during such time that such entity occupies and conducts business in its space adjoining the Shopping Center Property.

7. The foregoing restrictions and agreements are imposed on Outparcels A, B and C for the benefit of the Shopping Center Property. Accordingly, all references herein to "Declarant" shall mean the Declarant herein and any successor in title who may become the owner of the Shopping Center Property. In the event that another entity shall become the owner of the Shopping Center Property, then such entity shall be considered the Declarant for all purposes of this Declaration.

8. The agreements, restrictions and covenants herein made shall be deemed restrictive covenants running with the land and shall be binding upon Outparcels A, B and C and any person who may from time to time own, lease or otherwise have an interest in Outparcels A, B and C.

9. This Declaration is made in and shall be construed pursuant to the laws of the state in which the Shopping Center Property is located.

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IN WITNESS WHEREOF, the undersigned has executed this Declaration as of
the day and year above set forth.

WITNESS:

OTTUMWA SQUARE ASSOCIATES LIMITED PARTNERSHIP,
an Ohio Limited Partnership,
by its General Partner,
W & M PROPERTIES

John R. McGill
General Partner

By: John R. McGill
Its: General Partner

PARTNERSHIP ACKNOWLEDGMENT

STATE OF OHIO

§

§ SS

COUNTY OF CUYAHOGA

§

LIMITED PARTNERSHIP

Before me, a notary public in and for said County and State, personally
appeared John R. McGill, General Partner of W & M PROPERTIES, General Partner of
of OTTUMWA SQUARE ASSOCIATES, the partnership which executed the foregoing
instrument, who acknowledged that he did execute the foregoing instrument on
behalf of said partnership and that same is his free and voluntary act and deed
as General Partner of W & M PROPERTIES, General Partner of said partnership and
is the free act and deed of said General Partnership for the uses and purposes
therein set forth.

In witness whereof, I have hereunto set my hand and official seal at
Moreland Hills, Ohio this 13th day of April, 1988.

(SEAL)

Notary Public

My commission expires 1989

NOTARY PUBLIC - STATE OF OHIO
My commission expires on 12/31/88
at 147.02 per C.

EXHIBIT A

Developers Parcel or Tract-5

DESCRIPTION

A part of the Accretions to Government Lot Four (4), in Section Twenty-three (23), Township Seventy-two (72) North, Range Fourteen (14) West of the 5th P.M., in the City of Ottumwa, Wapello County, Iowa, being otherwise known and described as a part of Auditor's Lot Five (5) of the Accretions to said Government Lot Four (4) located in a part of the Southeast Quarter (SE $\frac{1}{4}$) of said Section 23, ALSO, a part of the Accretions to Government Lot One (1), in Section Twenty-six (26), Township Seventy-two (72) North, Range Fourteen (14) West of the 5th P.M., in the City of Ottumwa, Wapello County, Iowa, being otherwise known and described as a part of Auditor's Lot Two (2) of the Accretions to said Government Lot One (1) located in a part of the Northeast Quarter (NE $\frac{1}{4}$) of said Section 26, being more particularly described as follows, to-wit:

A part of the Southeast Quarter (SE $\frac{1}{4}$) of Section 23 and also a part of the Northeast Quarter (NE $\frac{1}{4}$) of Section 26, all in Township 72 North, Range 14 West of the 5th P.M., in the City of Ottumwa, Wapello County, Iowa, described as follows, to-wit: Commencing at the North One-quarter (N $\frac{1}{4}$) Corner of said Section 26; thence North 89°-55'-50" East along the North line of said Section 26, a distance of 52.01 feet to the Southeast Corner of the right of way acquired by the State of Iowa by Warranty Deed from David J. Thorne and Anna Thorne, filed for Record on the 5th Day of February 1963 in Book 307, Page 376 in the Office of the Recorder, Wapello County, Iowa; thence North 00°-40'-30" East along the East right of way line of Quincy Ave., a distance of 542.60 feet to an angle point in said right of way line; thence South 89°-53' East along the South right of way line of U. S. Highway No. 34 as found described in said Book 307, Page 376 and also found described in Book 307, Page 378, in the said Office of the Recorder, Wapello County, Iowa on a line that is 135 feet normally distant Southerly from centerline of Primary Road No. U. S. 34, a distance of 714.00 feet to the point of beginning of the Tract of Land herein described; thence continuing South 89°-53' East along the said right of way line, a distance of 602.35 feet; thence leaving the said right of way line and running South 00°-07' West, a distance of 405.50 feet; thence South 45°07' West, a distance of 458.70 feet; thence South 00°-07' West, a distance of 111.15 feet; thence North 89°-53' West, a distance of 159.30 feet; thence South 45°-07' West, a distance of 102.81 feet; thence North 00°-07' East, a distance of 100.00 feet; thence North 89°-53' West, a distance of 150.00 feet; thence North 00°-07' East, a distance of 159.70 feet; thence South 89°-53' East, a distance of 101.00 feet; thence North 00°-07' East, a distance of 566.00 feet to the point of beginning, containing 432,334.62 square feet or 9.925 Acres.

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EXHIBIT B-1Out Lot "A" or Tract-1DESCRIPTIONS

A part of Government Lot One (1), in Section Twenty six (26), Township Seventy-two (72) North, Range Fourteen (14) West of the 5th P.M., in the City of Ottumwa, Wapello County, Iowa, being otherwise known and described as a part of Auditor's Lot One (1) of said Government Lot One (1) located in the Northeast Quarter (NE $\frac{1}{4}$) of said Section 26, being more particularly described as follows, to-wit:

A part of the Northeast Quarter (NE $\frac{1}{4}$) of Section 26, Township 72 North, Range 14 West of the 5th P.M., in the City of Ottumwa, Wapello County, Iowa, described as follows, to-wit: Commencing at the North One-quarter (N $\frac{1}{4}$) Corner of said Section 26; thence North 89° - 55' - 50" East along the North line of said Section 26, a distance of 30.00 feet to the Northeast Corner of the right of way of Quincy Avenue running South from the said North line of Section 26; thence South 00° - 14' - 30" West along the East right of way line of said Quincy Avenue, a distance of 48.36 feet to the point of beginning of the Tract of Land herein described; thence South 89° - 53' East, a distance of 187.41 feet; thence South 00° - 07' West, a distance of 270.00 feet; thence NORTH 89° - 53' West, a distance of 188.00 feet to a point on the said East right of way line of Quincy Avenue, said point also being 30.00 feet East of the West line of the said NE $\frac{1}{4}$ of Section 26; thence North 00° - 14' - 30" East along the said East right of way line of Quincy Avenue, a distance of 270.00 feet to the point of beginning, containing 50,680.71 square feet or 1.163 Acres.

EXHIBIT B-2Out Lot "B" or Tract-2

A part of Government Lot Four (4), in Section Twenty-three (23), Township Seventy-two (72) North, Range Fourteen (14) West of the 5th P.M., in the City of Ottumwa, Wapello County, Iowa, being otherwise known and described as a part of Auditor's Lot Three (3) of said Government Lot Four (4) located in the Southeast Quarter (SE $\frac{1}{4}$) of said Section 23, being more particularly described as follows, to-wit:

A part of the Southeast Quarter (SE $\frac{1}{4}$) of Section 23, Township 72 North, Range 14 West of the 5th P.M., in the City of Ottumwa, Wapello County, Iowa, described as follows, to-wit: Commencing at the South One-Quarter (S $\frac{1}{4}$) Corner of said Section 23; thence North 89° - 55' - 50" East along the South line of the said SE $\frac{1}{4}$ of Section 23, a distance of 52.01 feet to the Southeast Corner of the right of way acquired by the State of Iowa by Warranty Deed from David J. Thorne and Anna Thorne, filed for Record on the 5th Day of February 1963 in Book 307, Page 375 in the Office of the Recorder, Wapello County, Iowa; thence North 00° - 40' - 30" East along the East right of way line of Quincy Avenue, a distance of 49.58 feet to the point of beginning of the Tract of Land herein described; thence continuing North 00° - 40' - 30" East along the said East right of way line of Quincy Ave., a distance of 235.01 feet; thence leaving the said right of way line and running South 89° - 53' East, a distance of 182.51 feet; thence South 00° - 07' West, a distance of 235.00 feet; thence North 89° - 53' West, a distance of 184.80 feet to the point of beginning, containing 43,150.62 square feet or 0.991 Acre.

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EXHIBIT B-3Out Lot "C" or Tract-3

A part of Government Lot Four (4), in Section Twenty-three (23), Township Seventy-two (72) North, Range Fourteen (14) West of the 5th P.M., in the City of Ottumwa, Wapello County, Iowa, being otherwise known and described as a part of Auditor's Lot Three (3) and/or said Government Lot Four (4) located in the Southeast Quarter (SE $\frac{1}{4}$) of said Section 23, being more particularly described as follows, to-wit:

A part of the Southeast Quarter (SE $\frac{1}{4}$) of Section 23, Township 72 North, Range 14 West of the 5th P.M., in the City of Ottumwa, Wapello County, Iowa, described as follows, to-wit: Commencing at the South One-quarter (S $\frac{1}{4}$) Corner of said Section 23; thence North 89°-55'-50" East along the South line of the said SE $\frac{1}{4}$ of Section 23, a distance of 52.01 feet to the Southeast Corner of the right of way acquired by the State of Iowa by Warranty Deed from David J. Thorne and Anna Thorne, filed for Record on the 5th Day of February 1963 in Book 307, Page 376 in the Office of the Recorder, Wapello County, Iowa; thence North 00°-40'-30" East along the East right of way line of Quincy Avenue, a distance of 349.59 feet to the point of beginning of the Tract of Land herein described; thence continuing North 00°-40'-30" East along the said East right of way line of Quincy Avenue, a distance of 193.01 feet to an angle point in said right of way line; thence South 89°-53' East along the South right of way line of U. S. Highway No. 34 as found described in said Book 307, Page 376 on a line that is 135 feet normally distant Southerly from centerline of Primary Road No. U. S. 34, a distance of 180.00 feet; thence leaving the said right of way line and running South 00°-07' West, a distance of 193.00 feet; thence North 89°-53' West, a distance of 181.88 feet to the point of beginning, containing 34,921.91 square feet or 0.802 Acre.