

Filed for Record the 4 day of Dec

20 pg

A.D., 1988 at 2:38 o'clock P M

Wal-Mart Properties, Inc.

Ottumwa Square Assoc. Limited Partnership By Wal-Mart Properties, Inc.

County Recorder

Doc 2632

RECORD 462

PAGE 650

EASEMENTS WITH COVENANTS AND
RESTRICTIONS AFFECTING LAND ("ECR")

THIS AGREEMENT is made as of the 27th day of July, 1988, between WAL-MART PROPERTIES, INC., a Delaware corporation, of Mitchell Bldg., 701 South Walton Blvd., Bentonville, Arkansas 72716 ("Wal-Mart"), and OTTUMWA SQUARE ASSOCIATES, an Ohio limited partnership, of 34555 Chagrin Blvd., Moreland Hills, Ohio 44022 ("Developer").

WITNESSETH:

WHEREAS, Wal-Mart is the owner of Tract 1 as shown on the plan attached hereto as Exhibit A hereof, said tract being more particularly described in Exhibit B hereof;

WHEREAS, Developer is the owner of Tract 2 shown on the plan attached hereto as Exhibit A hereof, said tract being more particularly described in Exhibit C hereof;

WHEREAS, Developer is also the owner of Outparcels A, B and C ("Outparcels") shown on the plan attached hereto as Exhibit A hereof, said Outparcels being more particularly described in Exhibits D-1, D-2 and D-3 respectively; and

WHEREAS, Wal-Mart and Developer desire that Tracts 1 and 2 and the Outparcels be developed in conjunction with each other pursuant to a general plan of improvement to form a commercial Shopping Center (sometimes hereinafter referred to as the "Shopping Center") and further desire that said tracts be subject to the easements and the covenants, conditions and restrictions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the premises, easements, covenants, conditions, restrictions, and encumbrances contained herein, the sufficiency of which is hereby acknowledged, Wal-Mart and Developer do hereby agree as follows:

1. Building/Common Areas.

- a. "Building Areas" as used herein shall mean that portion of Tract 1 and those portions of Tract 2 and ~~the~~ Outparcels shown on Exhibit A as "Building Area" (and "Future Building Area" and "Future Expansion Area"). Canopies may encroach from the Building Areas over the Common Areas provided the canopies do not interfere with

LSI

b. "Common Areas" shall be all of Tracts 1 and 2 and the Outparcels except the Building Areas.

c. Conversion to the Common Areas: Those portions of the Building Areas on each tract which are not from time to time used or cannot, under the terms of this Agreement (including Paragraph 6a[iii]), be used for buildings shall become part of the Common Area for the uses permitted hereunder and shall be improved, kept and maintained as provided herein.

2. Use. Buildings in the Shopping Center shall be used for commercial purposes of the type normally found in a retail shopping center including without limitation financial institutions, service shops, offices, and retail stores. No cafeteria, restaurant, theatre, bowling alley, billiard parlor, night club or other place of recreation or amusement, or any business serving alcoholic beverages shall occupy space within the Shopping Center without the written consent of Wal-Mart, for so long as Wal-Mart or any affiliate of Wal-Mart shall continue to operate its business on Tract 1. Developer recognizes that said businesses may inconvenience Wal-Mart's customers and adversely affect Wal-Mart's business.

Notwithstanding the foregoing, Wal-Mart hereby consents to the operation of any restaurant or video game room (or similar place of recreation or amusement) in the Shopping Center provided said restaurant or video game room is at least four hundred (400) feet from the Wal-Mart building. The term "cafeteria" as used herein shall not include those fast food restaurants which serve their customers cafeteria-style, such as Wendy's. Wal-Mart's consent shall not be required for the sale of alcoholic beverages as an incidental part of a tenant's business, such as the serving of alcoholic beverages in connection with a restaurant. The sale of alcoholic beverages within a supermarket or drugstore operation is hereby deemed to be an incidental part of such business.

For so long as Developer shall continue to operate a shopping center complex on Tract 2 and for one (1) year thereafter, Wal-Mart agrees that the Wal-Mart Building shall not be used for a restaurant, theater, family entertainment center or establishment serving alcoholic beverages for on premises consumption.

In addition, during the above time period, Wal-Mart agrees that the Wal-Mart Building shall not be used for a massage parlour, a bar, a tavern, an amusement arcade (not including a video game room), billiards room, pool hall,

bowling alley, live entertainment facility, stage production(s) and other entertainment incidental to a restaurant or cocktail lounge, skating rink or other similar place of public amusement, a beauty school, barber college, reading room, a place of instruction or any other operation catering primarily to students or trainees rather than customers, professional space and offices (except as is incidental to a retail operation), warehousing operations, offices, meeting halls, an office building or place for office usage of any nature and a meeting hall or place for private clubs or organizations, gas stations, flea markets, second hand merchandise operations, or consignment operations.

3. Competing Business. Developer covenants that as long as Wal-Mart, or any affiliate of Wal-Mart, is the user of Tract 1, either as owner or lessee, no space in or portion of Tract 2, and no space in or portion of any other real property adjacent to the Shopping Center which may subsequently be acquired by Developer, shall be leased or occupied by or conveyed to any other party for use as a discount department store or other discount store comparable to and competitive with that operated by Wal-Mart. In the event of a breach of covenant, Wal-Mart shall have the right to seek any and all remedies afforded by either law or equity, provided, however, that the easements granted in this Agreement shall in no event be terminated on account of any such breach of covenant.

4. Buildings.

- a. Design and Construction. The buildings shall be designed so that the exterior elevation of each shall be architecturally and aesthetically compatible and so that building wall footings shall not encroach from one tract onto another tract except as provided for in Subsection d. below. The design and construction shall be first quality. No building shall exceed thirty-five feet (35') in height above finished grade. No building shall have a metal exterior.
- b. Location. No building shall be constructed on Tracts 1 and 2 and the Outparcels (as either immediate development or future expansion) except within the Building Areas. The front wall(s) of the building(s) on Tracts 1 and 2 and Outparcel A shall be constructed in the location shown in Exhibit A.

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c. Fire Protection. Any building constructed in the Shopping Center shall be constructed and operated in such a manner which will preserve the sprinklered rate on the other buildings in the Shopping Center.

d. Easements. Wal-Mart and Developer hereby grant to each other such nonexclusive easements to install and maintain such footings and underground supports along their common property lines, extending not more than three (3) feet under the servient tenement, as shall be necessary in connection with the construction by each of its original Buildings and other improvements on the Shopping Center. At the request of either, the other will enter into an agreement in recordable form describing the easements provided for hereby in accordance with a survey made at the expense of the grantee(s) of such easements. Each such easement for such underground footings or supports for Buildings shall continue so long as any portion of this Agreement shall remain effective and thereafter so long as said affected Buildings exist. The grantee(s) of said easements shall be responsible for any repairs required to such footings. Commencing upon the date hereof and ending upon completion of the initial construction of the Common Area and Building(s) on the Shopping Center, each party grants to the other party for the use and benefit of each party's Tract, a nonexclusive easement to use the roadways and driveways on each party's Tract for the delivery and transport of necessary equipment and materials used in the construction of such Common Areas and Buildings. Each party agrees to use its best efforts not to materially interfere with the operation of the other party's business while using said roadways and driveways.

5. Common Areas.

a. Grant of Easements. Each party, as grantor, hereby grants to the other party, as grantee, and to the agents, customers, invitees, licensees, tenants and employees of grantee, a nonexclusive easement over, through and around their respective tracts for roadways, walkways, ingress and egress, parking of motor vehicles, loading and unloading of commercial and other vehicles, and the use of facilities installed for the comfort and convenience of

customers, invitees, licensees, tenants and employees of all business and occupant of the building constructed on the Building Areas defined above.

The within grant of easement shall also benefit the customers, invitees, licensees, tenants and employees of the business and occupant of the buildings constructed on ^{those} ~~that~~ certain parcels of land adjacent to the Shopping Center, which ^{parcels are} ~~parcel is~~ shown on Exhibit A and ^{are} ~~is~~ therein and herein referred to as "Outparcels A, B and C". "Outparcels A, B and C" are ~~"Outparcel A". "Outparcel A" is more particularly described in Exhibits D-1, D-2 and D-3.~~ Exhibit B attached hereto and made a part hereof.

b. Limitations on Use.

- (i) Customers. Each party shall use reasonable efforts to ensure that customers and invitees shall not be permitted to park on the Common Areas except while shopping or transacting business on Tracts 1 and 2 and the Outparcels.
- (ii) Employees. Each party shall use reasonable efforts to ensure that employees shall not park on the Common Areas, except in areas designated in Exhibit A as "employee parking areas," if any. The parties hereto may from time to time mutually designate and approve "employee parking areas" not shown in Exhibit A.
- (iii) General. All of the activity permitted within the Common Areas shall be used with reason and judgement so as not to interfere with the primary purpose of the Common Areas which is to provide for parking for the customers, invitees and employees of those businesses conducted within the Building Areas and for the servicing and supplying of such businesses. Persons using the Common Areas in accordance with this Agreement shall not be charged any fee for such use.

- c. Utility and Service Easements. Parties hereby expressly grant to each other and to their respective successors and assigns for the benefit of Tract 1, Tract 2 and the Outparcels, the nonexclusive and perpetual right and easement to install, maintain, repair, and replace Common Utility Facilities within and upon the Common Area of the Shopping Center at such places as may be necessary for the orderly development and operation of the Shopping Center and the

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Outparcels. Any party upon whose Tract any such Common Utility Facilities shall have been installed shall have the right, upon sixty (60) days prior notice to the other party served by said Common Utility Facilities, at any time or from time to time to move and relocate such Facilities to such place on its Tract as it shall designate; provided, however, that such relocation shall be made at the sole cost and expense of the party requesting such relocation and shall not interfere with, nor increase the cost of, any other user's utility service or unreasonably interfere with the conduct or operation of its business or cause any damage to such other user's Tract. The term "Common Utility Facilities" as used in this Paragraph 5(c) shall mean, "utility facilities for drainage and sewage, gas, water, electricity and other forms of energy, signals or services, including, but not limited to, sanitary and storm sewers, drainage, pumping facilities, gas and water mains, fire hydrants or other fire protection installations and electric power and telephone lines, which are available for use by the parties hereto for their respective Tracts or the Outparcels thereon and/or the Common Areas thereof (including those between the Shopping Center and the lines or facilities of the governmental body or public utility providing the utility service in question); excluding, however, laterals within five (5) feet of any building servicing only such building and located entirely on the Tract on which said building is located. Both parties will use their best efforts to cause the installation of such utility and service lines prior to paving of the Common Areas. No such lines, sewers, utilities or services of one party shall be installed within the Building Areas on the other party's parcel.

- d. Water Flow. Any alteration in the natural water flow which may occur as a natural consequence of normal construction activities and the existence of the party's improvements substantially as shown in Exhibit A (including without limitation building and building expansion, curbs, drives and paving) shall be permitted.

6. Development, Maintenance, and Taxes.

a. Development.

- (i) Arrangement. The arrangement of the Common Areas shall not be changed in a manner inconsistent with the provisions of this Agreement.
- (ii) "Parking Area" Ratio. Each party hereto agrees that at all times there shall be independently maintained on each tract parking area sufficient to accommodate not fewer than five and one-half (5.5) car spaces for each one thousand (1,000) square feet of Building Area on such tract.
- (iii) Development Timing. When any building is constructed within the Building Areas of a tract, the Common Areas of that tract shall be developed in accordance with Exhibit A at the expense of the owner of said parcel. In the event one party ("Developing Party") constructs improvements on Developing Party's tract prior to the development of the other tract, Developing Party shall have the right to grade, pave and use any portion of the Common Areas of non-developing party's tract for access and for construction of, but not limited to, drainage structures and utility lines as is necessary to provide essential services to Developing Party's Tract. Developing Party shall present an itemized statement of expenses incurred in the construction of said improvements to and upon non-developer party's tract, and non-developing party agrees to reimburse Developing Party for such costs within thirty (30) days of receipt thereof.
- (iv) Service Drive. Developer agrees that if on Exhibit A hereof a service drive is delineated on Tract 2 by crosshatching and is labelled as a "Service Drive," it shall develop the same simultaneously with the development and construction on Tract 1 by Wal-Mart. In the event Developer does not comply with the provisions of the preceding sentence, in addition to any other legal remedies, Wal-Mart shall have the right to cause the Service Drive delineated on Tract 2 to be developed and to be reimbursed by Developer for its costs in doing so within thirty (30) days of receipt of an itemized statement of expenses.

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b. Maintenance.

(i) Standards. Following completion of the improvements on the Common Areas, the parties hereto shall maintain the Common Areas in good condition and repair. The maintenance is to include without limitation the following:

- (a) Maintaining the surfaces in a level, smooth and evenly-covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use, and durability;
- (b) Removing all papers, ice and snow, mud and sand, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;
- (c) Placing, keeping in repair and replacing any necessary appropriate directional signs, markers and lines;
- (d) Operating, keeping in repair and replacing, where necessary, such artificial lighting facilities as shall be reasonably required;
- (e) Maintaining all perimeter and exterior building walls including but not limited to all retaining walls in a good condition and state of repair; and
- (f) Maintaining, mowing, weeding, trimming and watering all landscaped areas and making such replacements of shrubs and other landscaping as is necessary.

(ii) Expenses. The respective owners shall pay the maintenance expense of their tracts.

(iii) By Agent. Subject to the mutual agreement of the parties hereto, a third party may be appointed as an agent of the parties to maintain the Common Areas in the manner as above outlined. Said third party may receive for such agency a fee that is mutually acceptable to all parties to cover supervision, management, accounting and similar fees, which sums are to be included in the general maintenance expense paid by the respective owners of the Common Areas.

- c. Taxes. Each of the parties hereto agrees to pay or cause to be paid, prior to delinquency, directly to the appropriate taxing authorities all real property taxes and assessments which are levied against that part of the Common Areas owned by it.

7. Signs. No sign shall be located on the Common Areas on Tracts 1 and 2 except signs advertising businesses conducted thereon. There shall be no more than two (2) signs on the Common Areas on Tract 1 and two (2) signs on the Common Areas on Tract 2. No signs shall obstruct the ingress and egress shown on Exhibit A.

8. Indemnification/Insurance.

- a. Indemnification. Each party hereby indemnifies and saves the other party harmless from any and all liability, damage, expense, causes of action, suits, claims, or judgments arising from personal injury, death, or property damage and occurring on or from its own Tract, except if caused by the act or negligence of the other party hereto.

Developer and Wal-Mart each covenant and agree to keep or cause to be kept their respective Tracts and the improvements thereon, free and clear of and from any and all mechanics', materialmen's and other similar liens arising out of or in connection with the operations thereon or other activities of or other claiming under either of them, and to pay and discharge when due any and all lawful claims upon which any such lien may or could be based, and to save and hold the other party's Tract and the improvements thereon, free and harmless of and from any and all such liens and any and all claims of liens and suits or other proceedings pertaining thereto.

b. Insurance.

- (1) Each party shall procure and maintain in full force and effect throughout the term of this Agreement general public liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon, in or about its property, each party's insurance to afford protection to the limit of not less than \$1,000,000.00 for injury or death of a single person, and to the limit of not less than \$1,000,000.00 for any one

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occurrence, and to the limit of not less than \$100,000.00 for property damage. Each party shall provide the other party with certificates of such insurance from time to time upon written request to evidence that such insurance is in force. Such insurance may be written by additional premises endorsement on any master policy of insurance carried by the party which may cover other property in addition to the property covered by this Agreement. Such insurance shall provide that the same may not be cancelled without ten (10) days' prior written notice to the other party.

- (ii) At all times during the term of this Agreement, each party shall keep improvements on its property insured against loss or damage by fire and other perils and events as may be insured against under the broad form of Uniform Extended Coverage Clause in effect from time to time in the state in which the parties' respective properties are located, with such insurance to be for the full replacement value of the insured improvements.
- (iii) Policies of insurance provided for in this Paragraph 8 shall name Wal-Mart and Developer as insureds as their respective interests may appear, and each of them shall provide to the other certificates evidencing the fact that such insurance has been obtained.
- (iv) Wal-Mart for itself and its property insurer hereby releases Developer, and Developer for itself and its property insurer hereby releases Wal-Mart from and against any and all claims, demands, liabilities or obligations whatsoever for damage to each other's property or loss of rents or profits of either Wal-Mart or Developer resulting from or in any way connected with any fire or other casualty whether or not such fire or other casualty shall have been caused by the negligence or the contributory negligence of the party being released or by any agent, associate or employee of the party being released, this release being to the extent that such damage or loss is covered by the property insurance which the releasing party is obligated hereunder to carry, or, if the releasing party

is not carrying that insurance, then to the extent such damage or loss would be covered if the releasing party were carrying that insurance.

- (v) Notwithstanding anything to the contrary contained in this Paragraph 8, so long as the net worth of Wal-Mart or its parent company, Wal-Mart Stores, Inc. ("Stores"), shall exceed One Hundred Million Dollars (\$100,000,000.00), and so long as either Wal-Mart or Stores is owner or Lessee of Tract 1, Wal-Mart shall have the right to retain the financial risk for up to One Million Five Hundred Thousand Dollars, (\$1,500,000.00) per claim. If Wal-Mart so elects to self-insure, it shall annually, upon request, deliver a certificate to Developer stating its election and certifying its net worth, within thirty (30) days of each request.

9. Eminent Domain.

- a. Owner's Right To Award. Nothing herein shall be construed to give either party any interest in any award or payment made to the other party in connection with any exercise of eminent domain or transfer in lieu thereof affecting said other party's tract or giving the public or any government any rights in said tract. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of the Common Areas located on Tracts 1 and 2, the award attributable to the land and improvements of such portion of the Common Areas shall be payable only to the owner thereof, and no claim thereon shall be made by the owners of any other portion of the Common Areas.
- b. Collateral Claims. All other owners of the Common Areas may file collateral claims with the condemning authority for their losses which are separate and apart from the value of the land area and improvements taken from another owner.
- c. Tenant's Claim. Nothing in this Paragraph 9 shall prevent a tenant from making a claim against an owner pursuant to the provisions of any lease between tenant and owner for all or a portion of any such award or payment.
- d. Restoration Of Common Areas. The owner of each portion of the Common Areas so condemned shall promptly repair and restore the

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remaining portion of the Common Areas so owned as nearly as practicable to the condition of the same immediately prior to such condemnation or transfer, to the extent that the proceeds of such award are available under the terms of any first mortgage on the property and to the extent said proceeds are sufficient to pay the cost of such restoration and repair and without contribution from any other owner.

10. Rights And Obligations Of Lenders. If by virtue of any right or obligation set forth herein a lien shall be placed upon the tract of either party hereto, such lien shall expressly be subordinate and inferior to the lien of any first lienholder now or hereafter placed on such tract. Except as set forth in the preceding sentence, however, any holder of a first lien on Tracts 1 or 2 or the Outparcels, and any assignee or successor in interest of such first lienholder, shall be subject to the terms and conditions of this Agreement.

11. Expansion Of Shopping Center. The parties agree that in the event the Shopping Center is expanded by ownership, control of the parties or agreement with a third party, all of the provisions of this Agreement shall apply to the expanded area and the parking to the building ratio in the expanded area shall not be less than that provided in Paragraph 6a(ii).

12. Release from Liability. Any person acquiring fee or leasehold title to Tracts 1 or 2 or the Outparcels, or any expansion of the Shopping Center pursuant to Paragraph 11 or any portion thereof, shall be bound by this Agreement only as to the tract or portion of the tract acquired by such person. In addition, such person shall be bound by this Agreement only during the period such person is the fee or leasehold owner of such tract or portion of the tract, except as to obligations, liabilities or responsibilities that accrue during said period. Although persons may be released under this paragraph, the easements, covenants and restrictions in this Agreement shall continue to be benefits to and servitudes upon said tracts running with the land.

Notwithstanding anything to the contrary contained in this Agreement, any Party, its successors and assigns, shall look solely to the equity of the defaulting Party in the said defaulting Party's Tract in the Shopping Center for the satisfaction of each and every default upon the exercise of any remedy and right granted hereunder, and there shall be absolutely no personal liability on the part of any Party, their successors or assigns, or any partners of any Party (general or limited) for the performance of any obligations hereunder. Such

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exculpation of personal liability is intended to be absolute and without any exception whatsoever, unless said defaulting Party shall not have constructed improvements on its Tract, in which case said exculpation shall be ineffective. Notwithstanding the foregoing, this exculpation of personal liability of the parties shall be strictly limited to the parties' respective obligations under this Agreement and under that certain Declaration of Restrictions of even date hereto, and this exculpation shall not extend to the parties' respective obligations under any other agreement, including, without limitation, the Development Agreement between the parties of even date hereto.

13. Breach. In the event of breach of this Agreement, only all record owners of Tract 1 as a group, or all record owners of Tract 2 as a group, or Wal-Mart so long as it or any affiliate has an interest as owner or lessee of Tract 1 or Developer so long as it or any affiliate has an interest as owner or lessee of Tract 2 or the Outparcels, shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach. The unsuccessful party in any action shall pay to the prevailing party a reasonable sum for attorney's fees, which shall be deemed to have accrued on the date such action was filed. In addition to the foregoing, if any Party (hereinafter called the "Defaulting Party") shall fail to perform any of the provisions, covenants or conditions of this Agreement on its part to be performed, then the non-defaulting Party (hereinafter called the "Active Party") shall have the right, but in no event be obligated, upon forty-five (45) days notice to the Defaulting Party and its Mortgagee, to proceed to take such action as shall be necessary to cure such default, (including, in the case of a non-monetary default, action for equitable relief by way of injunction or other appropriate equitable remedy) all in the name of and for the account of the Defaulting Party (unless within such 45-day period the Defaulting Party and/or its Mortgagee shall cure such default, or in the case of default which by its nature cannot be cured within such 45-day period, the Defaulting Party and/or its Mortgagee shall take such action as is reasonably calculated to commence the curing thereof to completion). In such case the Defaulting Party shall within ten (10) days after demand therefor reimburse the Active Party for the expenses reasonably incurred by it in curing such default. The provisions of this Paragraph 13 shall survive the Termination Date of this Agreement.

14. Rights of Successors. The easements, restrictions, benefits and obligations hereunder shall create mutual benefits and servitudes running with

the land. This Agreement 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 the masculine gender includes the feminine and neuter.

15. Document Execution, Modification and Cancellation. It is understood and agreed that until this document is fully executed by both Developer and Wal-Mart there is not and shall not be an agreement of any kind between the parties hereto upon which any commitment, undertaking or obligation can be founded. This Agreement (including exhibits) may be modified or cancelled only by the mutual agreement of Wal-Mart as long as it or its affiliate has any interest as either owner or lessee of Tract 1, and Developer, as long as it or its affiliate has any interest as either owner or lessor of Tract 2.

16. Non-Merger. So long as Wal-Mart or its affiliate is owner or lessee of Tract 1 even though the underlying fee is owned by one person or entity, this Agreement shall not be subject to the doctrine of merger.

17. Duration. Unless otherwise cancelled or terminated, this Agreement and all the easements, rights and obligations hereof shall automatically terminate and be of no further force and effect after fifty-seven (57) years from the date hereof, unless any easement granted hereunder shall be in use, in which event any such easement shall continue for so long as such use shall continue.

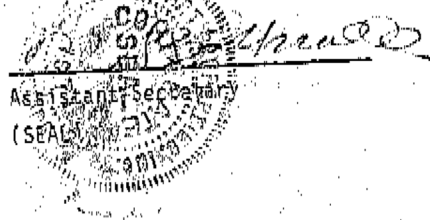
18. Headings. The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.

19. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto. The parties do not rely upon any statement, promise or representation not herein expressed, and this Agreement once executed and delivered shall not be modified or altered in any respect except by a writing executed and delivered in the same manner as required by this document.

24.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and
year first written above.

ATTEST:



ATTEST OR WITNESS:

John R. McGill
John R. McGill

WAL-MART PROPERTIES, INC.

Curtis H. Barlow
By: Curtis H. Barlow
Vice President of Real Estate
"Wal-Mart"

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

John R. McGill
By: John R. McGill
Its: General Partner
"Developer"

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CORPORATE ACKNOWLEDGMENT

STATE OF ARKANSAS §
 § SS
 COUNTY OF BENTON §

Be it remembered that on this 26th day of July, 1988, before me a notary public in and for the county and state aforesaid, came Curtis H. Barlow, Vice President of WAL-MART PROPERTIES, INC., a Delaware corporation, who personally known to me to be the person who executed as such officer the within instrument of writing on behalf of such corporation, and such person duly acknowledged the execution of the same to be the act and deed of said corporation.

In testimony whereof, I have hereunto set my hand and affixed my notary seal the day and year last above written.

Cathy Keith
 Cathy Keith, Notary Public

My commission expires October 28, 1994



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 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 _____ day of _____, 1988.

Notary Public

(SEAL)

My commission expires _____ 19__

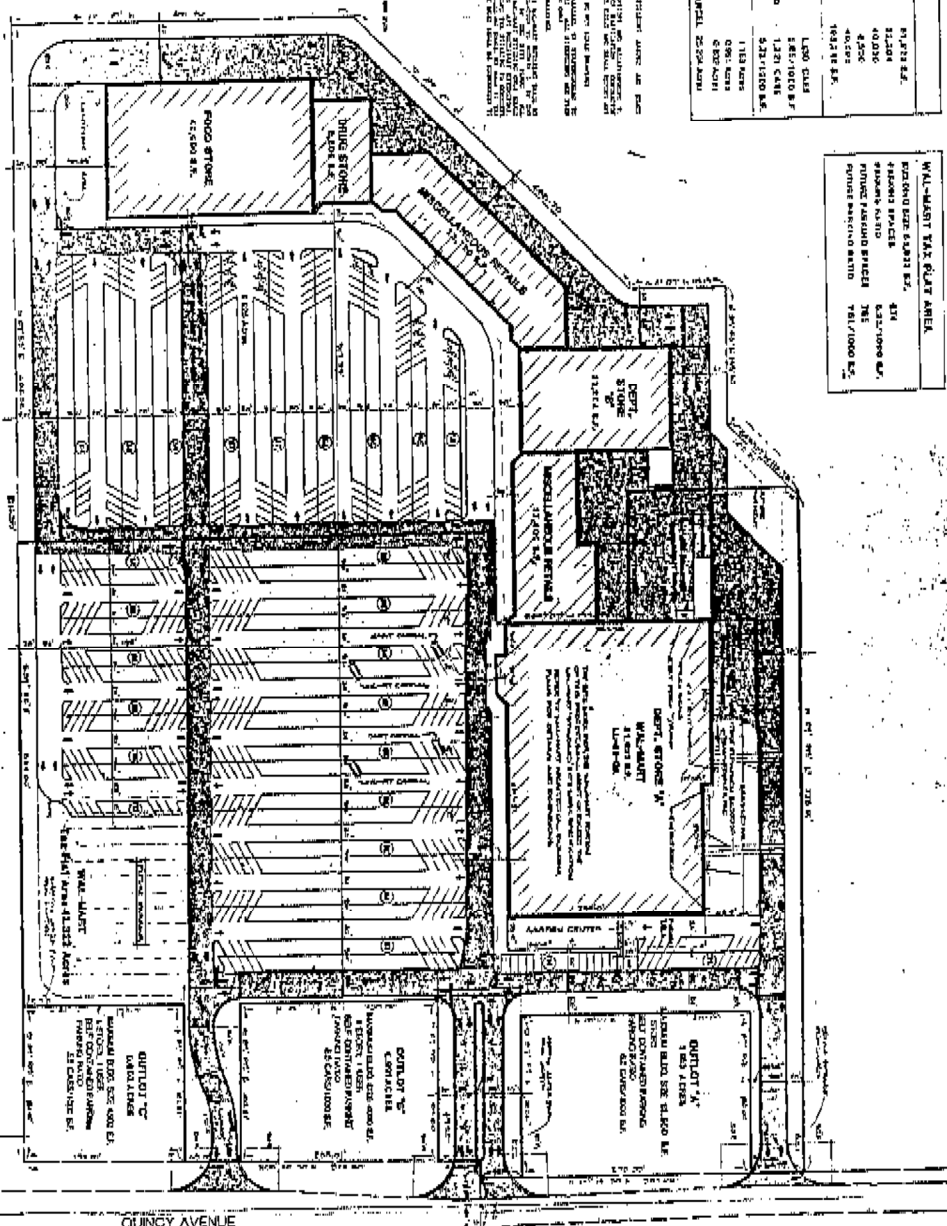


JOHN R. MCGILL, Notary
 Notary Public - State of Ohio
 My Commission Expires October 28, 1994

[illegible]

WILLMANT TAY PLAT AREA	
EXISTING BUILT 6,500 S.F.	414
PROPOSED SPACES	6,32,1050 S.F.
PROPOSED A.D.D	785
FUTURE PARKING SPACES	761,1000 S.F.
FUTURE PARKING MTRD	

1. LEE, ALBERTINE. MAJOR. RE: TITERS. ALONE. AS FOLLOWS:
2. GENEVIEVE BELL. BORN IN BRISTOL, ENGLAND. WED. 1900. 1920. 1921. 1922. 1923. 1924. 1925. 1926. 1927. 1928. 1929. 1930. 1931. 1932. 1933. 1934. 1935. 1936. 1937. 1938. 1939. 1940. 1941. 1942. 1943. 1944. 1945. 1946. 1947. 1948. 1949. 1950. 1951. 1952. 1953. 1954. 1955. 1956. 1957. 1958. 1959. 1960. 1961. 1962. 1963. 1964. 1965. 1966. 1967. 1968. 1969. 1970. 1971. 1972. 1973. 1974. 1975. 1976. 1977. 1978. 1979. 1980. 1981. 1982. 1983. 1984. 1985. 1986. 1987. 1988. 1989. 1990. 1991. 1992. 1993. 1994. 1995. 1996. 1997. 1998. 1999. 2000. 2001. 2002. 2003. 2004. 2005. 2006. 2007. 2008. 2009. 2010. 2011. 2012. 2013. 2014. 2015. 2016. 2017. 2018. 2019. 2020. 2021. 2022. 2023. 2024. 2025. 2026. 2027. 2028. 2029. 2030. 2031. 2032. 2033. 2034. 2035. 2036. 2037. 2038. 2039. 2040. 2041. 2042. 2043. 2044. 2045. 2046. 2047. 2048. 2049. 2050. 2051. 2052. 2053. 2054. 2055. 2056. 2057. 2058. 2059. 2060. 2061. 2062. 2063. 2064. 2065. 2066. 2067. 2068. 2069. 2070. 2071. 2072. 2073. 2074. 2075. 2076. 2077. 2078. 2079. 2080. 2081. 2082. 2083. 2084. 2085. 2086. 2087. 2088. 2089. 2090. 2091. 2092. 2093. 2094. 2095. 2096. 2097. 2098. 2099. 2100. 2101. 2102. 2103. 2104. 2105. 2106. 2107. 2108. 2109. 2110. 2111. 2112. 2113. 2114. 2115. 2116. 2117. 2118. 2119. 2120. 2121. 2122. 2123. 2124. 2125. 2126. 2127. 2128. 2129. 2130. 2131. 2132. 2133. 2134. 2135. 2136. 2137. 2138. 2139. 2140. 2141. 2142. 2143. 2144. 2145. 2146. 2147. 2148. 2149. 2150. 2151. 2152. 2153. 2154. 2155. 2156. 2157. 2158. 2159. 2160. 2161. 2162. 2163. 2164. 2165. 2166. 2167. 2168. 2169. 2170. 2171. 2172. 2173. 2174. 2175. 2176. 2177. 2178. 2179. 2180. 2181. 2182. 2183. 2184. 2185. 2186. 2187. 2188. 2189. 2190. 2191. 2192. 2193. 2194. 2195. 2196. 2197. 2198. 2199. 2200. 2201. 2202. 2203. 2204. 2205. 2206. 2207. 2208. 2209. 2210. 2211. 2212. 2213. 2214. 2215. 2216. 2217. 2218. 2219. 2220. 2221. 2222. 2223. 2224. 2225. 2226. 2227. 2228. 2229. 2230. 2231. 2232. 2233. 2234. 2235. 2236. 2237. 2238. 2239. 2240. 2241. 2242. 2243. 2244. 2245. 2246. 2247. 2248. 2249. 2250. 2251. 2252. 2253. 2254. 2255. 2256. 2257. 2258. 2259. 2260. 2261. 2262. 2263. 2264. 2265. 2266. 2267. 2268. 2269. 2270. 2271. 2272. 2273. 2274. 2275. 2276. 2277. 2278. 2279. 2280. 2281. 2282. 2283. 2284. 2285. 2286. 2287. 2288. 2289. 2290. 2291. 2292. 2293. 2294. 2295. 2296. 2297. 2298. 2299. 2300. 2301. 2302. 2303. 2304. 2305. 2306. 2307. 2308. 2309. 2310. 2311. 2312. 2313. 2314. 2315. 2316. 2317. 2318. 2319. 2320. 2321. 2322. 2323. 2324. 2325. 2326. 2327. 2328. 2329. 2330. 2331. 2332. 2333. 2334. 2335. 2336. 2337. 2338. 2339. 2340. 2341. 2342. 2343. 2344. 2345. 2346. 2347. 2348. 2349. 2350. 2351. 2352. 2353. 2354. 2355. 2356. 2357. 2358. 2359. 2360. 2361. 2362. 2363. 2364. 2365. 2366. 2367. 2368. 2369. 2370. 2371. 2372. 2373. 2374. 2375. 2376. 2377. 2378. 2379. 2380. 2381. 2382. 2383. 2384. 2385. 2386. 2387. 2388. 2389. 2390. 2391. 2392. 2393. 2394. 2395. 2396. 2397. 2398. 2399. 2400. 2401. 2402. 2403. 2404. 2405. 2406. 2407. 2408. 2409. 2410. 2411. 2412. 2413. 2414. 2415. 2416. 2417. 2418. 2419. 2420. 2421. 2422. 2423. 2424. 2425. 2426. 2427. 2428. 2429. 2430. 2431. 2432. 2433. 2434. 2435. 2436. 2437. 2438. 2439. 2440. 2441. 2442. 2443. 2444. 2445. 2446. 2447. 2448. 2449. 2450. 2451. 2452. 2453. 2454. 2455. 2456. 2457. 2458. 2459. 2460. 2461. 2462. 2463. 2464. 2465. 2466. 2467. 2468. 2469. 2470. 2471. 2472. 2473. 2474. 2475. 2476. 2477. 2478. 2479. 2480. 2481. 2482. 2483. 2484. 2485. 2486. 2487. 2488. 2489. 2490. 2491. 2492. 2493. 2494. 2495. 2496. 2497. 2498. 2499. 2500. 2501. 2502. 2503. 2504. 2505. 2506. 2507. 2508. 2509. 2510. 2511. 2512. 2513. 2514. 2515. 2516. 2517. 2518. 2519. 2520. 2521. 2522. 2523. 2524. 2525. 2526. 2527. 2528. 2529. 2530. 2531. 2532. 2533. 2534. 2535. 2536. 2537. 2538. 2539. 2540. 2541. 2542. 2543. 2544. 2545. 2546. 2547. 2548. 2549. 2550. 2551. 2552. 2553. 2554. 2555. 2556. 2557. 2558. 2559. 2560. 2561. 2562. 2563. 2564. 2565. 2566. 2567. 2568. 2569. 2570. 2571. 2572. 2573. 2574. 2575. 2576. 2577. 2578. 2579. 2580. 2581. 2582. 2583. 2584. 2585. 2586. 2587. 2588. 2589. 2590. 2



INITIAL

EX 11317 A

PROPOSED SHOPPING CENTER

LOCATION:
U.S. HIGHWAY 34 & GUNNEY AVENUE
OTTAWA, K2M2A

DEVELOPER
DEVELOPERS INTERNATIONAL
JAMES G. WATSON, PRESIDENT
MONTREAL, QUEBEC, CANADA

C.1

EXHIBIT 6DESCRIPTIONWal-Mart Parcel (Dept. Store "A") or Tract-4

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 together with a part of the Accretions belonging to said part of Government Lot Four (4), being otherwise known and described as a part of Auditor's Lot One (1), a part of Auditor's Lot Three (3) and a part of Auditor's Lot Five (5) of 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 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, together with all of the accretions belonging to said part of Government Lot One (1), being otherwise known and described as a part of Auditor's Lot One (1) and a part of Auditor's Lot Two (2) 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 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, said point also being the point of beginning of the Tract of Land herein described; thence North 00°-40'-30" East along the East right of way line of Quincy Ave., a distance of 49.58 feet; thence leaving the said right of way line and running South 89°-53' East, a distance of 184.80 feet; thence North 00°-07' East, a distance of 235.00 feet; thence North 89°-53' West, a distance of 182.51 feet to a point on the said East right of way line of Quincy Ave.; thence North 00°-40'-30" East along the said East right of way line of Quincy Ave., a distance of 65.00 feet; thence leaving the said right of way line and running South 89°-53' East, a distance of 181.88 feet; thence North 00°-07' East, a distance of 193.00 feet to a point on the South right of way line of U. S. Highway No. 34 as found described of Record in said Book 307, Page 376; thence South 89°-53' East along the said South right of way line of U. S. Highway No. 34, a distance found described in Book 307, Page 376 and also found described in Book 307, Page 376 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 534.00 feet; thence leaving the said right of way line and running South 00°-07' East, a distance of 566.00 feet; thence North 89°-53' West, a distance of 104.00 feet; thence South 00°-07' West, a distance of 152.70 feet; thence South 89°-53' East, a distance of 150.00 feet; thence South 00°-07' West, a distance of 190.00 feet; thence South 45°-07' West, a distance of 14.14 feet; thence North 89°-53' West, a distance of 778.14 feet to a point on the East right of way line of the said Quincy Ave.; 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 Ave., a distance of 64.70 feet; thence leaving the said right of way line and running South 89°-53' East, a distance of 188.00 feet; thence North 00°-07' East, a distance of 270.00 feet; thence North 89°-53' West, a distance of 187.11 feet to a point on the said East right of way line of Quincy Ave.; thence North 00°-14'-30" East along the said East right of way line of Quincy Ave., a distance of 60.36 feet to a point on the North line of the said NE $\frac{1}{4}$ of Section 26; thence North 89°-55'-50" East along the North line of the NE $\frac{1}{4}$ of Section 26, a distance of 22.01 feet to the point of beginning, containing 536,786.53 square feet or 12.322 Acres.

INITIAL

EXHIBIT CDESCRIPTIONDevelopers Parcel or Tract-5

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 459.70 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 160.00 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 161.00 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.

INITIAL

23

66

EXHIBIT 0-1Out Lot "A" or Tract-1 DESCRIPTIONS

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.

INITIAL



EXHIBIT D-2Out Lot "B" of 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) and also a part of Auditor's 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 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 Acres.

INITIAL

671

EXHIBIT D-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 (SE $\frac{1}{4}$) 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.

INITIAL