

Filed for Record the 16 day of AprilA.D., 1993 at 2:31 o'clock P. M.53  
5  
Alldi, Inc.  
TO

WMS Realty Limited Partnership

Cassidy Smith  
COUNTY RECORDER

Doc # 6753

RECORD FEES \$2.00

RECORD 485

/// PAGE 111

## RECIPROCAL EASEMENT AGREEMENT

THIS RECIPROCAL EASEMENT AGREEMENT, made as of this 4<sup>th</sup> day of December, 1992, between ALDI, INC., an Illinois corporation, having an address of P. O. Box 550, West Burlington, Iowa 52655-0550 ("Aldi") and WMS REALTY LIMITED PARTNERSHIP, having an address of 667 Madison Avenue, New York, New York 10021 ("WMS"). Aldi and WMS shall each be sometimes referred to herein individually as an "Owner" and collectively as the "Owners".

## RECITALS

A. WMS is the owner in fee of that certain parcel of real property located in Ottumwa, Wapello County, Iowa and described in Exhibit A attached hereto and by this reference made a part hereof ("Wal-Mart Parcel").

B. Aldi is the owner in fee of that certain parcel of real property located in Ottumwa, Wapello County, Iowa and more particularly described in Exhibit B attached hereto and by this reference made a part hereof ("Aldi Parcel"). The Wal-Mart Parcel and the Aldi Parcel shall each be sometimes referred to herein individually as a "Parcel" and collectively as the "Parcels".

C. The Wal-Mart Parcel is presently occupied by Wal-Mart Stores, Inc. ("Wal-Mart") and operated as an integral part of a commercial Shopping Center ("Center").

D. The Wal-Mart Parcel and the Aldi Parcel are contiguous to each other.

E. WMS and Aldi recognize that it would be mutually beneficial to integrate the Aldi Parcel into the Center, and to operate and use their Parcels and the common areas and facilities to be erected thereon including, without limitation, the common curb, roadways, driveways, aisles, walkways, sidewalks, and landscaped areas ("Common Areas") in conjunction with the other Parcel. WMS and Aldi therefore intend herein to grant to each other certain reciprocal easements for pedestrian and vehicular ingress and egress over the Common Areas. Such easements, obligations and restrictions shall run to the benefit of and bind the respective Parcels and the owners of all or any portion thereof. The terms WMS and Aldi shall be deemed to refer to such parties and their respective successors, grantees and assigns of such parties.

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NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, WMS and Aldi hereby grant, covenant and agree as follows:

## ARTICLE I

### EASEMENTS

Section 1.01 Grant of Easements. WMS hereby grants and conveys to Aldi the easements, rights and privileges hereinafter set forth over, across and upon the Wal-Mart Parcel, and Aldi hereby grants and conveys to WMS the easements, rights and privileges hereinafter set forth over, across and upon the Aldi Parcel, to have and to hold all and singular the easements, rights and privileges herein set forth, over, across and upon each Parcel to the grantee of such easements, rights and privileges, their respective successors and assigns forever.

The easements granted hereby are perpetual and non-exclusive, and shall be for the benefit of the Owners of the Aldi Parcel and the Wal-Mart Parcel, and each such Owner may grant the use of such easements to their successors and assigns, tenants and other occupants of the Aldi Parcel and the Wal-Mart Parcel, respectively, for the duration of such occupancy, and to the customers, employees, agents and business invitees thereof; but same is not intended nor shall it be construed as creating any rights in or for the benefit of the general public or tenants or other occupants of the Aldi Parcel or the Wal-Mart Parcel, except as specifically granted pursuant to this Section 1.01.

Section 1.02 Access Easements. A perpetual, non-exclusive easement and right to the use of the Common Areas located on the Parcel of each Owner, for purposes of ingress, egress, passage and delivery, by vehicles, delivery trucks, and pedestrians to, from and between the Parcels and adjacent public streets and roads. Access between, to and from the Wal-Mart Parcel and the Aldi Parcel shall be limited to the approximate area highlighted in red on Exhibit C attached hereto and made a part hereof, which shall be approximately thirty (30) feet in width. The easements herein granted shall not include the right of Aldi, or its employees, invitees, contractors, agents, successors or assigns to use the Wal-Mart Parcel for parking of vehicles.

Section 1.03 Restrictions. The easements granted by this Article I shall be subject to the covenants and restrictions set forth in Article II.

## ARTICLE II

### LIABILITY; INDEMNIFICATION

Section 2.01 Liability; Indemnification. The Owner of each Parcel shall indemnify, defend and hold every other Owner, tenant and

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occupant of each Parcel harmless (except for loss or damage resulting from the tortious acts of such other Owner, tenant or occupant, their respective officers, contractors, employees, licensees, customers, invitees and agents) from and against any damages, liability, actions, claims and expenses (including attorneys' fees in a reasonable amount) in connection with the loss of life, bodily injury and/or damage to property arising from or out of any occurrence in or upon such Owner's Parcel, or occasioned wholly or in part by any act or omission of the indemnifying Owner, its tenants, agents, contractors, employees or licensees.

Section 2.02 Liability Insurance. The Owner of each Parcel shall maintain or cause to be maintained public liability insurance insuring against claims on account of loss of life, bodily injury or property damage that may arise from, or be occasioned by the condition, use or occupancy of the Common Areas of the Parcel by Owner or the occupant of a Parcel, their respective tenants, agents, contractors, employees, licensees, customers and invitees, except as herein provided. Said insurance shall be carried by a reputable insurance company or companies qualified to do business in Iowa and having limits for loss of life or bodily injury in the amounts of not less than \$1,000,000 for each person and \$1,000,000 for each occurrence and \$500,000 property damage for each occurrence, and shall name each Owner as an additional insured. Such insurance may be carried under a "blanket" policy or policies covering other properties of the party and its subsidiaries, controlling or affiliated corporations. The Owner of each Parcel shall, upon written request from the Owner of the other Parcel, furnish to the party making such request certificates of insurance evidencing the existence of the insurance required to be carried pursuant to this Section. Each Owner's insurance policy(ies) shall include provisions denying to the insurer subrogation rights against the other Owner with respect to property damage to the extent such rights have been waived by the insured prior to the occurrence of damage or loss.

Section 2.03 Waiver. Each Owner hereby waives any rights of recovery against the other Owner, its directors, officers, contractors, employees, agents, licensees, tenants and occupants, for any property damage covered by policies of the kind specified above, whether or not such damage or loss shall have been caused by any acts or omissions of the other Owner or its directors, officers, contractors, employees, agents, licensees, tenants or occupants, so long as the policies of each Owner shall contain the waiver of subrogation clause required in Section 2.02 above.

#### ARTICLE III

#### WAIVER, FORCE MAJEURE, ETC.

Section 3.01 Non-Waiver. No delay or omission of any Owner in the exercise of any right accruing upon any default of any other Owner shall impair such right or be construed to be a waiver thereof.

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and every such right may be exercised at any time during the continuance of such default. A waiver by any Owner of a breach of, or a default in, any of the terms and conditions of this Agreement by any other Owner shall not be construed to be a waiver of any subsequent breach of or default in the same or any other provision of this Agreement. Except as otherwise specifically provided in this Agreement, (i) no remedy provided in this Agreement shall be exclusive but each shall be cumulative with all other remedies provided in this Agreement and (ii) all remedies at law or in equity shall be available.

Section 3.02 Non-Terminable Agreement. No breach of the provisions of this Agreement shall entitle any Owner or party to cancel, rescind or otherwise terminate this Agreement, but such limitation shall not affect, in any manner, any other rights or remedies which any party may have hereunder by reason of any breach of the provisions of this Agreement.

#### ARTICLE IV

##### TERM

Section 4.01. This Agreement and the easements, rights, obligations and liabilities created hereby shall be perpetual to the extent permitted by law.

#### ARTICLE V

##### EFFECT OF INSTRUMENT

Section 5.01 Mortgage Subordination. Any mortgage or deed of trust affecting any Parcel shall at all times 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 of trustee's sale shall acquire title subject to all of the terms and provisions of this Agreement. Each party hereto represents and warrants to the other parties that except for the mortgages identified on Exhibit D attached hereto and made a part hereof, there is no presently existing mortgage or deed of trust liens that are expressly superior to the lien of this Agreement.

Section 5.02 Binding Effect. Any transferee of a Parcel shall automatically be deemed, by acceptance of the title thereto, to have assumed all obligations of this Agreement relating thereto to the extent of its interest therein and to have agreed with the then Owner or Owners of the Parcel, to execute any and all instruments and to do any and all things reasonably required to carry out the intentions of this Agreement and the transferor shall upon the completion of such transfer be relieved of all further liability under this Agreement except liability with respect to matters that may have arisen during its period

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of ownership of the portion of property so conveyed that remain unsatisfied.

Section 5.03 Non-Dedication. Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of a Parcel to the general public or for any public use or purpose whatsoever, it being the intention of the parties hereto and their successors and assigns that nothing in this Agreement, expressed or implied, shall confer upon any person, other than the parties hereto and their successors and assigns, any rights or remedies under or by reason of this Agreement.

Section 5.04 Responsibility. Notwithstanding anything to the contrary contained in this instrument, each party to this Agreement shall be liable and responsible for the obligations, covenants, agreements and responsibilities created by this Agreement and for any judgment rendered hereon only to the extent of its respective interest in the land burdened hereunder and any improvements thereon.

#### ARTICLE VI

##### NOTICES

Section 6.01. Any notice, report or demand required, permitted or desired to be given under this Agreement shall be in writing and shall be deemed to have been sufficiently given or served for all purposes if it is mailed by registered or certified mail, return receipt requested on the third business day following the date of such mailing:

If to WMS:                      WMS Realty Limited Partnership  
                                    c/o Thomas J. Tisch  
                                    667 Madison Avenue  
                                    New York, New York 10021

With copies to:                Michael S. Scher, Esquire  
                                    Shatz, Meier & Scher  
                                    18 East 48th Street  
                                    New York, New York 10017

If to Aldi:                      Aldi, Inc.  
                                    P.O. Box 550  
                                    Burlington, Iowa 52655-0550

The addresses of the Owners may be changed from time to time by written notice given in accordance with the provisions hereof.

## ARTICLE VII

## MISCELLANEOUS

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Section 7.01. (a) If any provision of this Agreement, or portion thereof, or the application thereof to any person or circumstances, shall, to any extent be held invalid, inoperative or unenforceable, the remainder of this Agreement, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby; it shall not be deemed that any such invalid provision affects the consideration for this Agreement; and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(b) This Agreement shall be construed in accordance with the laws of the State of Iowa.

(c) This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereof.

(d) This Agreement may be amended, modified or terminated at any time only by a written document, executed and acknowledged by the Owner of each Parcel and consented to by Wal-Mart Stores, Inc. so long as Wal-Mart Stores, Inc., or any affiliate thereto, shall occupy the Wal-Mart Parcel; this Agreement shall not be otherwise amended, modified or terminated during the term hereof.

(e) Nothing in this Agreement shall be construed to make the parties hereto partners or joint venturers or render either of said parties liable for the debts or obligations of the other.

(f) Wal-Mart Stores, Inc., as the current lessee of the Wal-Mart Parcel, hereby consents to the terms and conditions of this Reciprocal Easement Agreement, to the extent of its right, title and interest in and to the Wal-Mart Parcel, and hereby covenants to each Owner that so long as Wal-Mart shall lease the Wal-Mart Parcel, Wal-Mart shall be obligated to comply with any and all of the obligations of the Owner of the Wal-Mart Parcel set forth in this Easement and to pay any costs and expenses otherwise payable by the Wal-Mart Parcel Owner hereunder. Wal-Mart and WMS hereby acknowledge and agree that the lease between Wal-Mart and WMS dated November 3, 1989, shall hereafter be deemed subordinate to this Reciprocal Easement Agreement.

(g) First National Bank of Chicago, who holds a mortgage as Trustee against the Wal-Mart Parcel hereby consents to the terms and conditions of this Reciprocal Easement Agreement, to the extent of its right, title and interest in and to the Wal-Mart Parcel, and hereby acknowledges and agrees that its mortgage shall hereafter be deemed subordinate to this Reciprocal Easement Agreement.

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(h) J. G. Finley who holds a mortgage as Trustee against the Wal-Mart Parcel, hereby consents to the terms and conditions of this Reciprocal Easement Agreement, to the extent of its right, title and interest in and to the Wal-Mart Parcel, and hereby acknowledges and agrees that its mortgage shall hereafter be deemed subordinate to this Reciprocal Easement Agreement.

(i) Notwithstanding anything to the contrary provided in this Agreement, it is specifically understood and agreed, such agreement being a primary consideration for the execution of this instrument by the parties hereto, that if any of the parties shall fail to perform any covenant, term or condition of this Agreement upon such party's part to be performed and, as a consequence of such default, any other party to this Agreement shall recover a money judgment against the non-performing party, such judgment shall be satisfied only out of the proceeds of sale received upon execution of such judgment and levy thereon against the right, title and interest of the non-performing party in and to the Parcel subject hereto, as the same may then be encumbered, and such non-performing party, nor any of the partners, shareholders or officers comprising such non-performing party, shall be liable for any deficiency. It is understood that in no event shall any such judgment creditor have any right to levy execution against any property of the non-performing party other than its interest in the subject Parcel, as hereinbefore expressly provided.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first written above.

ATTEST:

*John Beal*  
*Ralph Doss*

WMS REALTY LIMITED PARTNERSHIP

By WMS Realty Partner Corp.

its General Partner

A Delaware Corporation

By: Thomas J. Tisch

Its: President

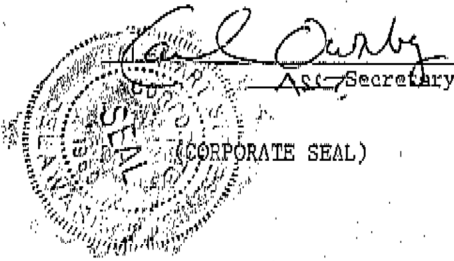
ALDI, INC., an Illinois  
corporation

By: Francis L. Frasin

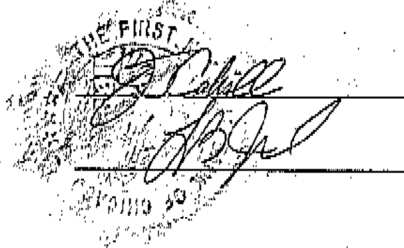
its General Manager

*Jess Anesi*

ATTEST:

WAL-MART STORES, INC.  
a Delaware corporationBy: [Signature]Its: ASST VICE PRESIDENT

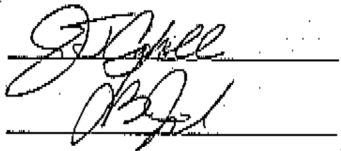
ATTEST:

FIRST NATIONAL BANK OF CHICAGO,  
TRUSTEEBy: [Signature]Its: R.J. BRUNER  
VICE PRESIDENT

ATTEST:

J. G. FINLEY, TRUSTEE

J. G. Finley

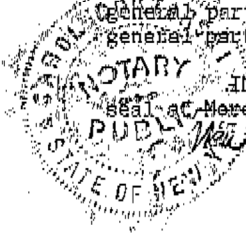




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*New York*  
 STATE OF ~~OHIO~~ )  
*New York* ) SS:  
 COUNTY OF ~~COLUMBIA~~ )

BEFORE ME, a Notary Public in and for said County and State, personally appeared THOMAS J. Hesch, President of WMS REALTY PARTNER CORP., General Partner of WMS REALTY LIMITED PARTNERSHIP, 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 president of WMS REALTY PARTNER CORP., 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 New York, N.Y. this 4th day of December, 1992.

Carol Duktorski  
 Notary Public

STATE OF IOWA )  
 ) SS  
 COUNTY OF DES MOINES)

CAROL DUKTORSKI  
 NOTARY PUBLIC, State of New York  
 No. 30-4720614  
 Qualified in Nassau County  
 Com. Exp. in New York County  
 Commission Expires June 30, 1994

Personally appeared before me, the undersigned, a Notary Public, in and for said County and State, Francis L. Brazier, known to me to be the General Manager of ALDI, INC., an Illinois corporation, the corporation which executed the foregoing instrument, who acknowledged that he did sign and seal the foregoing instrument for, and on behalf of said corporation being thereunto duly authorized by its Board of Directors that the same is his free act and deed as such officer and the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Burlington, Iowa this 12th day of January 1993. ~~1992~~

K. A. L. Liers  
 Notary Public



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STATE OF ARKANSAS }  
COUNTY OF BENTON } SS:

Be it remembered that on this 1st day of October, 1992, before me a Notary Public in and for the County and State aforesaid, came Michael R. Nelson, West Vice President of WAL-MART STORES, INC., a Delaware corporation, who is 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.

Sorel L. Johnson  
Notary Public

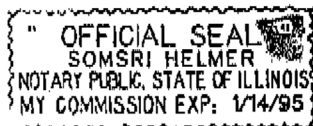
My Commission expires July 19, 1993.

STATE OF Illinois }  
COUNTY OF Cook } SS:

Personally appeared before me, the undersigned, a Notary Public, in and for said County and State, R. J. Bruner, known to me to be the Vice President of FIRST NATIONAL BANK OF CHICAGO, the corporation which executed the foregoing instrument, who acknowledged that he did sign and seal the foregoing instrument for and on behalf of said corporation being thereunto duly authorized by its Board of Directors, that the same is his free act and deed as such officer and the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at CHICAGO, ILLINOIS this 5th day of January, 1993.

Somsri Helmer  
Notary Public,



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STATE OF ILLINOIS )  
COUNTY OF COOK ) SS:

BEFORE ME, a Notary Public, in and for said County and State, personally appeared the above-named J. G. FINLEY, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at CHICAGO, ILLINOIS this 5TH day of JANUARY, 1993.

Somsri Helmer  
Notary Public

## THIS INSTRUMENT PREPARED BY:

Jerry M. Cyncynatus, Esq.  
Allgood & Cyncynatus  
34555 Chagrin Boulevard  
Moreland Hills, Ohio 44022  
Telephone: (216) 247-4700



REA/IOWA  
070991  
081991  
090991  
022692  
040292  
060392  
061992  
082092  
092592

## EXHIBIT "A"

## DESCRIPTION

1-Mark Parcel (Dept. Store "A") or Tract-4

part of Government Lot Four (4), in Section Twenty-three (23), Township Seventy-two (2) 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: Beginning at the North One-quarter (NE $\frac{1}{4}$ ) 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 North 89°-53' East along the said South right of way line of U. S. Highway No. 34 as found described in Book 307, Page 376 and also found described in Book 307, Page 370, 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 1.00 feet; thence leaving the said right of way line and running South 00°-07' West, 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 159.70 feet; thence South 89°-53' East, a distance of 150.00 feet; thence South 00°-07' West, a distance of 100.00 feet; thence North 45°-07' West, a distance of 14.14 feet; thence North 89°-53' West, a distance of 770.14 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 1.00 feet; thence North 89°-53' West, a distance of 187.41 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 48.36 feet to a point on the West line of the said NE $\frac{1}{4}$  of Section 26; thence North 89°-55'-50" East along the said West 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.

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## Legal Description

Lot Number Two (2) and Lot Number Three (3), in HEHR'S First Addition to the City of Ottumwa, Wapello County, Iowa.

EXHIBIT B

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EXHIBIT D

The following parties hold a mortgage against the Wal-Mart Parcel as of the date of the Reciprocal Easement Agreement:

1. First National Bank of Chicago, Trustee
2. J. G. Finley, Trustee







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## EXHIBIT D

The following parties hold a mortgage against the Wal-Mart Parcel as of the date of the Reciprocal Easement Agreement:

1. First National Bank of Chicago, Trustee
2. J. G. Finley, Trustee