

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Wal-Mart Stores, Inc.
Real Estate Department
702 Southwest Eighth Street
Bentonville, Arkansas 72716

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**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND RECIPROCAL EASEMENTS**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RECIPROCAL EASEMENTS ("Declaration") is executed as of this 29TH day of JUNE, 1992, by WAL-MART STORES, INC., a Delaware corporation, of 702 Southwest Eighth Street, Bentonville, Arkansas 72716 ("Wal-Mart"), and GATEWAY ASSOCIATES, a California general partnership of 12625 Highbluff Drive, Suite 304, San Diego, California 92130 ("Developer").

W I T N E S S E T H:

WHEREAS, Wal-Mart is the owner of Tract 1 (a "Tract") 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 (a "Tract") shown on the plan attached hereto as Exhibit A hereof, said Tract being more particularly described in Exhibit C hereof; and

WHEREAS, Tract 1, Tract 2, and all of the improvements, appurtenances and facilities located thereon, including but not limited to buildings, common areas, sidewalks, parking lot and landscaping are hereinafter collectively referred to as the "Project".

WHEREAS, Wal-Mart and Developer desire that Tract 1 and Tract 2 be developed in conjunction with each other pursuant to a general and common plan of improvement to form a commercial shopping center (sometimes hereinafter referred to as the "Shopping Center");

WHEREAS, it is the desire and intention of Wal-Mart and Developer to develop, subdivide, improve, sell, lease and convey interests in the Project subject to certain uniform covenants, conditions, restrictions, limitations, reservations, easements, rights-of-way, liens, charges and other protective and beneficial provisions set forth herein in order to implement a uniform, general and common plan designed to preserve, protect and enhance the value, desirability and attractiveness of the Project, and each Tract located therein for the mutual benefit and protection of the Project, each Tract located therein, Wal-Mart, the Developer and all subsequent owners and lessees of Tracts or retail space within the Project.

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

establish and declare that the Project and each Tract located therein shall be owned, held, conveyed, transferred, divided, sold, leased, rented, encumbered, developed, improved, graded, landscaped, maintained, repaired, occupied and used subject to the uniform covenants, conditions, restrictions, easements, rights, rights-of-way, liens, charges and other protective and beneficial provisions set forth in this Declaration, each and all of which (i) are hereby expressly and exclusively imposed upon and against the Project and each Tract and lot located therein as mutual, beneficial and equitable servitudes in favor of and for the mutual use and benefit of the Project, and each Tract and lot located therein, the Developer, Wal-Mart, their successors and assigns and all subsequent owners of Tracts and lots within the Project and their respective heirs, successors, representatives and assigns in order to implement the uniform, general and common plan described above and (ii) are hereby expressly declared to be binding upon the Project and each Tract and lot located therein, and upon the owners of each Tract and lot located therein and shall run with the land and each and every party thereof, enure to the benefit of and be a burden upon the Project and each Tract and lot located therein and shall bind the respective heirs, successors and assigns of the owners of the Project, and each Tract and lot located therein. Upon recordation of this Declaration, any conveyance, transfer, sale, hypothecation, assignment, lease or sublease made by Developer or Wal-Mart, or by any owner of any Tract or lot within the Project, shall be and hereby is deemed to incorporate by reference the provisions of this Declaration, as the same may from time to time be amended, and the provisions of this Declaration shall be enforceable by the specific parties identified in Section 13 hereinbelow, their successors or assigns, or by any person, firm, corporation or trust duly authorized by such persons identified in that section to enforce all or any one or more of the provisions of this Declaration.

The covenants, conditions, restrictions, rights, liens, charges and other protective and beneficial provisions set forth herein are "double covenants" as defined and described in the appropriate sections of California Civil Code, and to the extent expressly provided herein are covenants to refrain from particular uses of contiguous property, as defined and described in the appropriate sections of California Civil Code, ("Restrictive Covenant" herein).

IN CONSIDERATION OF THE FOREGOING, Developer and Wal-Mart hereby covenant and agree as follows:

1. Building/Common Areas.

- a. "Building Areas" as used herein shall mean those portions of Tract 1 and those portions of Tract 2 as 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 the use of the Common Areas.
- b. "Common Areas" shall be all of Tracts 1 and 2 except the Building Areas.

- c. "Conversion of 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 Declaration (including Paragraph 5a(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.
- d. "Parking Spaces" or "parking spaces" shall mean parking spaces, measured and configured in the manner required by the local ordinance or regulation which is applicable from time to time.
- e. A "tract or "lot" shall mean a lot or parcel as designed in the California Subdivision Map Act.
- f. The phrase "the parties hereto" shall mean Wal-Mart and its successor in Tract 1, and Developer and its designated successor pursuant to Section 14 below.

2. Use.

- a. 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 within 300 feet of the Wal-Mart building, theatre, bowling alley, billiard parlor, nightclub or other place of recreation or amusement, or any business which derives 50% or more of its gross sales volume serving or selling alcoholic beverages shall occupy space within the Shopping Center without the written consent of Wal-Mart. Developer recognizes that said businesses may inconvenience Wal-Mart's customers and adversely affect Wal-Mart's business. The covenant and restriction established pursuant to this Section 2.a is a Restrictive Covenant pursuant to the appropriate sections of California Civil Code.
- b. It is expressly agreed that nothing contained in this Declaration shall be construed to contain a covenant, either express or implied, to either commence the operation of a business or thereafter continuously operate a business within the Shopping Center.

3. Buildings.

- a. Design and Construction. The Building Areas 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 e below. The design and construction shall be of first quality. No building shall exceed thirty-five feet (35')

in height above finished grade except those in line with the Wal-Mart building. No building shall have a metal exterior. The covenant and restriction established pursuant to this Section 3.a is a Restrictive Covenant pursuant to the appropriate sections of California Civil Code.

- b. Location. No building shall be constructed on Tracts 1 and 2 (as either immediate development or future expansion) except within the Building Areas and no improvements or alterations which substantially vary from those shown on Exhibit A may be made without the prior written consent of Wal-Mart. The front wall(s) of the building(s) on Tracts 1 and 2 shall be constructed in the location shown in Exhibit A. The covenant and restriction established pursuant to this Section 3.6 is a Restrictive Covenant pursuant to the appropriate sections California Civil Code.
- c. Tract 2 Development. Tract 2 shall be developed only under the following guidelines. The covenant and restriction established pursuant to this Section 3.c is a Restrictive Covenant pursuant to the appropriate sections California Civil Code.
 - (i) Any building constructed on Tract 2 shall not exceed thirty-five (35) feet in height, as measured from the mean finished elevation of the parking area of the Shopping Center;
 - (ii) The Building constructed on Tract 2 shall not exceed 5,000 square feet in size;
 - (iii) Any rooftop equipment shall be screened in a manner satisfactory to the Developer;
 - (iv) No rooftop sign shall be erected on any building constructed on Tract 2;
 - (v) No free-standing identification sign may be erected on Tract 2 without approval of the Developer, and in no event shall such free-standing identification sign exceed the height of the Shopping Center pylon sign or block the visibility of the Wal-Mart building. 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 3'3" in height, the type and location of such signs to be approved by Developer;
 - (vi) No improvements shall be constructed, erected, expanded or altered on Tract 2 until the plans for same (including site layout, exterior building materials and colors and parking) have been approved in writing by Developer. No building or

structure of any kind shall be erected on Tract 2 except upon that area designated as a Building Area on the Site Plan; provided, there may be constructed and maintained a canopy or canopies projecting from said Building Area; normal foundations and doors for ingress and egress may project from such building area; and signs may be erected upon said canopy or canopies, so long as said signs do not obstruct the signs of any other owner or tenant of the Shopping Center;

- (vii) In developing and using Tract 2, the owner of Tract 2 shall continuously provide and maintain a parking ratio on Tract 2 equal to one of the following: (i) fifteen (15) spaces for every one thousand (1,000) square feet of building space for any restaurant or entertainment use in excess of five thousand (5,000) square feet, (the same ratio shall be provided for a McDonald's Restaurant, notwithstanding a building footprint of less than five thousand (5,000) square feet; or (ii) ten (10) spaces for every one thousand (1,000) square feet of building space for any restaurant or entertainment use less than five thousand (5,000) square feet (subject to the exception above; or (iii) six (6.0) spaces per one thousand (1,000) square feet of building space for any other use. In addition, the owner of Tract 2 shall cause landscaping areas to be added and maintained in conjunction with any building or other improvement constructed on Tract 2;
- (viii) Tract 2 shall be kept neat, orderly, planted in grass and trimmed until improved and constructed and in compliance with any requirements imposed by local governmental agencies and once developed Tract 2 shall be maintained pursuant to section 5b of this Declaration;
- (ix) Any building, structure, or improvement on Tract 2 shall be used for retail, restaurant or office purposes only. Banks and financial institutions shall be deemed retail purposes. No building, structure, or improvement on Tract 2 may be used as a theater, night club, bowling alley, health spa, cafeteria, billiard parlor or other place of recreation or amusement, or as a business which derives 50% or more of its gross sales volume serving or selling alcoholic beverages;
- (x) Any party having an ownership or leasehold interest in Tract 2 shall repair any damage or blockage caused to

any of the Common Utility Facilities, as defined in Section 4.c of this Agreement serving Tract 1 or Tract 2 caused by such Owner, lessee, tenant or user of Tract 2, to the extent Tract 2 benefits from any of the Common Utility Facilities serving Tract 1 or Tract 2. The Owner of Tract 2 or its lessee, shall pay to Developer its pro rata share of the cost of constructing, maintaining and operating the Common Utility Facilities serving Tract 1 and Tract 2. These obligations of the owner and lessee of Tract 2 are joint and several. Wal-Mart shall have the rights specified in Section 9, below, to enforce the financial obligations of the Tract 2 owner or lessee described in this Section 3.c(x).

(xi) In the event any building, structure or other improvement on Tract 2 shall be damaged or destroyed by any casualty, the owner, lessee or user of Tract 2 shall promptly:

(A) repair and/or reconstruct such improvement to the condition required by this Section 3.c, or

(B) level such improvement, remove the debris from Tract 2 and keep Tract 2 neat, orderly, planted in grass and trimmed, until subsequently improved and constructed upon. These obligations of the owner and lessee of Tract 2 are joint and several. In the event such restoration is not materially commenced within two (2) months of such casualty and diligently prosecuted to completion, or in the event the steps required in clause (B) above are not completed within thirty (30) days of such casualty, Developer and Wal-Mart may take the steps specified in clause (B) at the expense of the owner or lessee of Tract 2, and have the remedies specified in Section 9.

(xii) Any of the restrictions set forth in this Section 3.c may be waived, amended, modified, released, or terminated in writing at any time and from time to time by Developer; provided that Developer shall not waive, amend, modify, release or terminate this Declaration without the prior written consent of Wal-Mart, provided further, however, that Developer shall not amend or modify any of the foregoing restrictions if any such amendment or modification would impose additional restrictions on Tract 2 without the prior written consent of the fee owner of Tract 2;

- (xiii) The foregoing restrictions and agreements are imposed on Tract 2 for the benefit of Tract 1 and Tract 2. The agreements, restrictions and covenants herein made shall be deemed restrictive covenants running with the land and shall be binding upon Tract 2 and any person who may from time to time own, lease, or otherwise have an interest in Tract 2.
- d. Fire Protection. Any other buildings constructed in the Shopping Center shall be constructed and operated in such a manner so as to preserve the "Unlimited Area Code Classification," as defined in the appropriate building codes on the Wal-Mart building and shall maintain the same structural classification, site clearances, and sprinkler rating as the Wal-Mart building. It is understood and agreed that all buildings within the Shopping Center shall have a sprinkler system for fire protection, if required to preserve the Unlimited Area Code Classification.
- e. Encroachment Easements.
- (i) In the event any building wall footings straddle a property line between two tracts, and such footings underlie both a wall for Wal-Mart's building, and a wall for Developer's building, such footings shall be considered "Shared Footings" as described herein. The repair and maintenance of Shared Footings shall be the joint obligation of the owners of each tract served by or making use of the same. The cost of such repair and maintenance shall be borne equally by the owners served by and/or making use of any such Shared Footings. If Shared Footings are damaged or destroyed by casualty, any owner who has used such Shared Footings may restore the same and the other owner served by and/or making use of the same shall be obligated to contribute one-half (1/2) of the cost of such restoration subject, however, to the right of either such owner to seek a larger contribution from the other owner under any rule of law regarding liability for negligence, comparative negligence or willful acts or omissions. Developer or Wal-Mart may seek reimbursement of its share of such costs, repair and restoration pursuant to Section 9 below. The right of any owner to use Shared Footings situated, placed, constructed or reconstructed in substantially the same location originally constructed or placed by the Developer or Wal-Mart shall, in accordance with the appropriate sections of the California Civil Code, constitute an easement or appurtenance to such owner's

tract. The right of any owner to contribution from any other owner under this subsection shall be appurtenant and run with the land within the boundaries of his tract. The repair and maintenance of any portion of any Shared Footings shall otherwise be subject in all events to such regulations, standards and time requirements as established in this Declaration.

- (ii) In the event any building wall footings encroach from one tract onto another, or into the Common Area, despite efforts to avoid that occurrence, and such encroachment is not in excess of thirty-six (36) inches in horizontal distance to the tract whose building wall footings encroached, a valid easement for such encroachment shall exist as long as such encroachment shall exist. Said easement is established by this Declaration. In interpreting deeds, plans and maps of all or any portion of the Project, the existing physical boundaries of tracts and buildings, reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be the boundaries of such tract or buildings rather than the metes and bounds expressed in any such deed, plans or map, regardless of settling or lateral movement of such building and regardless of minor variances between boundaries shown on any such deed, plan or map and those of such building. None of the rights, obligations, easements, or restrictions created and/or reserved hereby, or by any instrument or conveyance of any tract within the Project shall be altered in any way by encroachments due to settlement or shifting of any portion of any building within the Project. At the request of the owner of any such encroaching footing or settled footing, wall or building, or at the request of the owner of the tract upon which such improvement encroaches, the other Owner shall enter into an agreement in recordable form describing the easements provided for in this subsection, in accordance with a survey made at the expense of the grantee(s) of such easements. The grantee(s) for said easements shall be responsible for any repairs required to such footings.

4. Common Areas.

- a. Grant of Easements. There are hereby reserved and established to and for the benefit of Developer and Wal-Mart, and their successors-in-interest, nonexclusive easements appurtenant to

each Tract in the Project for ingress, egress, driveway use, loading and unloading of commercial and other vehicles, and otherwise for the enjoyment, comfort and convenience of customers, invitees, licensees, tenants and employees of all businesses and occupants of the building constructed on the Building Area, to pass over, through and around and use the Common Area and the parties' respective tracts in the Project, including but not limited to the right to use driveways, roadways, walkways, and other facilities constituting Common Area, except and provided however that the owners, lessees, tenants and other users of Tract 2 shall not have any right, easement or license to park vehicles on other Tracts or the Common Area in the Project, and provided all of the foregoing easements are subject and subordinate to Wal-Mart's and Developer's rights as elsewhere specified herein, including the right to redesign, construct and reduce the Common Area.

b. Limitations on Use.

- (i) Customers. Each owner, lessee and tenant in the Project 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.
- (ii) Employees. Each owner, lessee and tenant in the Project 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. Wal-Mart and Developer may from time to time, by mutual agreement, designate, approve and locate or relocate "employee parking areas" not shown in Exhibit A.
- (iii) General. All of the activity permitted within the Common Areas shall be conducted 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. Nothing contained herein shall prohibit the rights of Wal-Mart to conduct promotional sales in the parking area of Tract 1 or on the sidewalks located on Tract 1 provided that Wal-Mart does not block the flow of traffic in the Common Area between Tract 1 and 2 and the adjacent roadways.

- c. Utility And Service Easements. Developer and Wal-Mart hereby expressly grant to each other and to their respective successors and assigns for the benefit of Tract 1 and Tract 2, the

nonexclusive and perpetual right and easement to install, maintain, repair, and replace Common Utility Facilities within and upon the Common Areas of the Shopping Center at such places as may be necessary for the orderly development and operation of the Shopping Center. Any party hereto 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 hereto serviced 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 their 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 party's Tract. The term "Common Utility Facilities" as used in this Section 4.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, detention/retention facilities, 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 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. Developer and Wal-Mart will use reasonable 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 or under accessory buildings on the other party's Tract. Wal-Mart hereby grants to Developer, for the benefit of Developer and the Tract 2 owner, the opportunity, and Developer hereby declares that Tract 2 owner shall have the opportunity to tie into and use, at the expense of the Tract 2 owner, that portion of the Common Utility Facilities; provided that (i) the exercise of any right, privilege or easement provided in this subsection shall be subject to conditions previously established by Developer and Wal-Mart, that such exercise shall be reasonable and in good faith, that any disruption of Common Utility Facility services to Tract 1 shall occur only during hours which are not Wal-Mart's normal business hours, and that all damage to any Common Utility Facilities or

to any portion of the Common Area resulting therefrom shall be repaired at the sole cost and expense of the person or persons exercising such privilege, with such damages to be recoverable by Wal-Mart or Developer pursuant to Section 9 below; and (ii) that such tie into and use of such Common Utility Facilities shall not interfere with the quality, quantity and effective operation of the other users.

- d. Drainage/Water Flow. Any alteration in the natural water drainage flow which may occur as a natural consequence of normal construction activities and the existence of Developer's or Wal-Mart's improvements substantially as shown in Exhibit A (including without limitation building and building expansion, curbs, drives and paving) shall be permitted. There are hereby reserved to Developer and Wal-Mart, easements in, over, under, across and through the Common Area to grade, establish and maintain drainage patterns and facilities for the benefit of the project as a whole and for Tract 1, Tract 2, and Common Area. Upon establishment and completion of such drainage patterns and facilities, all of Tract 1, Tract 2, and the Common Areas shall be and remain subject thereto.

5. Development, Maintenance, and Taxes.

a. Development.

- (i) Arrangement. The arrangement of the Common Areas shall not be changed in a manner materially inconsistent with the provisions of this Declaration, provided, however, that Developer and Wal-Mart may mutually agree to any such change, whether or not judged material, and neither the owners of Tract 2 or any other Tract in the Project, shall have any remedy with respect to such change unless they (A) are entitled, pursuant to Section 13 to raise such objections and (B) can prove to a court of equity, by clear and convincing evidence, that each of said owner's net income from the Project has been materially impaired as a direct result of such change, and upon such proof, such owner's sole remedy shall be damages.
- (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 (5.0) car spaces for each one thousand (1,000) square feet of Building Area on such tract, except that Tract 2 shall maintain a parking ratio pursuant to the requirements set forth in Section 3.c(vii).
- (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 hereto (the "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 nondeveloping 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 the Developing Party's Tract. Developing Party shall present an itemized statement of expenses incurred in the construction of said improvements to and upon nondeveloping party's tract, and the nondeveloping party agrees to reimburse the Developing Party for such costs within thirty (30) days of receipt thereof. Upon the nondeveloping party's failure to pay in full said sums within thirty (30) days of presentation of said itemized statement, or provided good faith detailed objection to the unpaid portions thereof, the Developing Party shall have the remedies specified in Section 9.

- (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 in the manner specified in Section 5(a)(iii) above.

b. Maintenance.

- (1) 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.
- (2) Expenses. The respective owners of tracts within the Shopping Center shall maintain and pay the maintenance expense of their Tracts.
- (3) By Agent. Subject to the mutual agreement of the parties hereto, a third party may be appointed as an agent of the parties hereto 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 the parties hereto to cover supervision, management, accounting and similar fees.
- 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 Project owned by it provided, however, that if both the property of Wal-Mart and the property of Developer are contained within one county assessor's tax parcel: (A) Wal-Mart and Developer each shall work, in cooperation and independently, to have said assessor divide the assessor's parcel to conform to the boundaries of Tract 1 and Tract 2, and (B) in the event taxes and assessments arising after acquisition of Tract 1 by Wal-Mart are levied prior to such division of the assessors parcel, the same shall be prorated between Tract 1 and Tract 2 based upon the square footage thereof (equitable adjusting for any improvements thereon at the time of the assessment thereof) and Developer shall pay his share thereof to Wal-Mart prior to the date each installment thereof is due, Wal-Mart shall remit the total to the tax collector, and Wal-Mart shall have the remedies specified in Article 9 in the event Developer fails to timely pay his share.
6. Signs. No sign shall be located on the Common Areas illustrated on the plan of Tracts 1 and 2 attached hereto except signs advertising businesses conducted thereon. There shall be no more than two (2) signs on the Common Areas on Tract 1 and one (1) sign on the Common Areas on Tract 2. No signs shall obstruct the ingress and egress shown on Exhibit A. Signage for Tract 2 shall be consistent with the restrictions set forth in paragraph 3c(v) contained herein.

7. Indemnification/Insurance.

a. Indemnification. Wal-Mart, as owner of Tract 1, and Developer, as owner of Tract 2, and their successors and assigns, (each owner of Tract 1 and Tract 2 or lot in the Project being referred to for the purpose of this Section 7 only, as a "Party") each hereby indemnifies and saves the other Parties 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, or lot except if caused by the act or negligence of the Party indemnified hereby. Each Party covenants and agrees to keep or cause to be kept, their respective Tracts or lots, as the case may be, 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 either party or others claiming under either party, 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, or lot as the case may be, 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.

- (i) Each Party shall procure and maintain in full force and effect throughout the term of this Declaration 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 One Million Dollars (\$1,000,000.00) for injury or death of a single person, and to the limit of not less than One Million Dollars (\$1,000,000.00) for any one occurrence, and to the limit of not less than \$1,000,000.00 for property damage. 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 Declaration. Such insurance shall provide that the same may not be cancelled without thirty (30) days prior written notice to the other Party.
- (ii) At all times during the term of this Declaration, each Party shall keep improvements on its lot or tract 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 California, with such insurance to be for the full

replacement cost of the insured improvements, with a deductible no greater than ten percent (10%) of replacement costs, subject, however, to the right granted herein to Wal-Mart to self-insure.

- (iii) Policies of insurance provided for in this Section 7 and maintained by Wal-Mart and Developer and its successors with respect to Tract 1 and Tract 2, respectively, shall name Wal-Mart and Developer as insureds as their respective interests may appear, and each of them shall provide to each other certificates, upon written request, evidencing the fact that such insurance has been obtained.
- (iv) Each Party for itself and its property insurer hereby releases the other Parties and their property insurers from and against any and all liabilities, claims, causes of action, obligations, demands, damages, losses, costs, or expenses, including attorneys fees and costs, for damage to each other Party's property or loss of rents or profits of any Party 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 intentional action, negligence or the contributory negligence of the Party being released or by any officer, agent, employee or associate 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. This release extends to all liabilities, claims, causes of action, obligations, demands, damages, losses, costs or expenses, whether known or unknown, suspected or unsuspected, matured or unmatured, contingent or fixed, and liquidated or unliquidated, arising directly or indirectly out of the subject matter of the release. The parties hereto acknowledge that all of their rights under the appropriate sections of California Civil Code, are hereby expressly waived, and acknowledge that they have been advised that the section reads as follows:
"Certain Claims Not Affected by General Release. A General Release does not extend to claims which the creditor does not know or suspect to exist in its favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor. "Each owner, lessee, mortgage or trustee, beneficiary, in accepting a conveyance of an interest in the Project shall

be deemed to have acknowledged that it is a party to the foregoing release, and to a waiver of it's potential claims under the appropriate sections of California Civil Code.

- (v) Each policy of insurance described herein shall contain a waiver by said insurer of any and all rights of subrogation against each other Party, and their officers, employees, agents, associates and representatives, and said insurance policy shall provide that any "noncontrol" provision in said policy is excluded or superseded by an endorsement providing that the insurance obtained pursuant to this Section 7.b shall not be prejudiced by any act or neglect of any of the insureds when such act or neglect is not within the knowledge and control of all of the insureds collectively and shall likewise not be prejudiced by any failure of the insureds, individually or collectively, to comply with any warranty or condition with regard to any portion of the Project over which each insured individually, or the insureds collectively, have no control. Said insurance policy shall provide that it may not be cancelled, suspended or avoided in whole or in part by any reason of any act, omission or breach of any covenant, condition or restriction contained herein.
- (vi) Notwithstanding anything to the contrary contained in this Paragraph 7, so long as the net worth of Wal-Mart shall exceed One Hundred Million Dollars (\$100,000,000.00), and so long as Wal-Mart is owner or Lessee of Tract 1, Wal-Mart shall have the right to retain the financial risk for all or part of any claim for damages. In the event Wal-Mart elects to self-insure, it shall deliver a letter to Developer indicating the same.

8. Eminent Domain.

- a. Owner's Right To Award. Nothing herein shall be construed to give any party hereto any interest in any award or payment made to the other party hereto 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 8 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 any portion of the Common Areas or other improvements to a tract so condemned shall promptly repair and restore the remaining portion of the Common Areas and the improvements to its tract 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 sufficient to pay the cost of such restoration and repair and without contribution from any other owner.

9. Enforcement Remedy/Lien Right.

- a. Agreement to Pay. Wal-Mart and Developer covenant and agree for each tract owned by it in the Project that such ownership, and the ownership thereof by each successor and assign of Developer and Wal-Mart, is expressly made subject to assessments as set forth in this Declaration, and each owner of a tract in the Project, by acceptance of a conveyance of a tract covenants and agrees for each tract owned by him, to pay to the party entitled thereto any assessments levied in accordance with the provisions of this Declaration, and to allow the party entitled thereto to enforce any assessment lien established in accordance with the provisions of this Declaration by nonjudicial proceedings under a power of sale or by other means authorized by California law.
- b. Assessments/Lien and Personal Obligation of Owner. Each assessment or installment, together with all collection costs, and reasonable attorneys fees relating to collection and enforcement hereof shall, at the time such assessment or installment becomes due and payable, be a lien upon the tract of each owner. In the event such an assessment or installment becomes due and payable, and is thereafter unpaid at the time the owner of any tract conveys any interest, including but not limited to a fee interest, a leasehold estate, or a mortgage or deed of trust, in his tract to a third party, the assessment or installment shall be a lien upon the tract senior and superior to the interest of the new owner, tenant, mortgagee or beneficiary, and in the case of a new owner, whether through voluntary or involuntary conveyance of title to a tract, such new owner shall be liable for payment of said installment. No owner, tenant, lessee, mortgagee or beneficiary may be relieved from the obligation to pay any such assessment or installments by waiving the use or enjoyment of all or any portion of the Common Area, or by abandoning its tract.
- c. Levying of Assessment. In the event Wal-Mart or Developer, or their successor-in-interest, determines that any assessment

shall be levied for one of the purposes elsewhere specified in this Declaration, Wal-Mart or the Developer, or their successor-in-interest, shall provide written notice to the owner of each tract upon which such an assessment is to be levied, describing the amount of the assessment, the reason therefore, and the date upon which payment is due. In the event said assessment is not paid by the date specified for payment, interest shall accrue upon such assessment at the judgment rate as specified, from time to time, by the California Legislature. Upon delivery of said notice of assessment, said assessment shall become a lien against the owner's tract, and such lien shall be enforceable by a power of sale under California Civil Code. In addition to the enforcement powers described above, Developer and Wal-Mart, and their successors-in-interest, may enforce delinquent assessments, including delinquent installments, by suing a tract owner directly on the debt established by the assessment, or by enforcing their lien against the owner's tract as provided above and foreclosing the lien through judicial proceedings. Neither Developer nor Wal-Mart shall be limited to one form of action in enforcing and collecting said assessments. The Developer and Wal-Mart, may commence and maintain a lawsuit directly on the debt without waiving their right to enforce their lien against the owner's tract for the delinquent assessments. In any action instituted by the Developer or Wal-Mart to collect delinquent assessments, the prevailing party shall be entitled to recover costs and reasonable attorneys fees.

- d. Recording of Assessment Lien. A delinquent assessment or installment, together with accompanying interest in collection cost and enforcement costs including reasonable attorneys' fees, may be recorded in the Official Records of the county in which the Project is located. The party claiming the assessment shall prepare a written notice which describes the amount of the delinquent assessment or installment, the related charges authorized by this Declaration, a description of the tract, and the name of the purported owner, and such assessment notice shall be acknowledged by an officer, partner or agent of the party recording the notice. If the delinquent assessment or installment and related charges are paid or otherwise satisfied, the party recording such notice shall record a notice of satisfaction and release of lien.
- e. Foreclosure Under Assessment Lien. The party recording such notice may enforce any assessment lien established hereunder by filing an action for judicial foreclosure or by recording a notice of default in the form described in the California Civil Code to commence a nonjudicial foreclosure under power of sale.

Any nonjudicial foreclosure under power of sale shall be conducted in accordance with the requirements of California Civil Code that are applicable to nonjudicial foreclosures of mortgages or deeds of trust, under power of sale, provided that the party recording the notice of assessment may appoint its attorney, any officer or director, or any title insurance company authorized to do business in California to conduct the sale in the role of trustee. The party recording such notice may bid on the tract at the sale and the party acquiring the tract at the sale may hold, lease, mortgage and convey the acquired tract free of all rights of redemption after said nonjudicial sale. If the tract owner's default is cured before the last date for redemption as described in the California Civil Code, or before the completion of a judicial foreclosure, including payment of all costs and expenses incurred by the party recording the notice of assessment, the party recording such notice shall record a notice of satisfaction and release of lien, and upon receipt of written request by the owner of the tracts, a notice of rescission rescinding the declaration of default and demand for sale.

f. Injunctive Relief. The parties hereto acknowledge and agree that they have bargained for specific performance of the covenants, conditions, restrictions, rights, easements, and rights-of-way contained in this Declaration, and all other provisions hereof, and that each party entitled to enforcement of the terms hereof pursuant to Section 13 below, including but not limited to Wal-Mart and Developer, shall be entitled to injunctive relief, including but not limited to temporary restraining orders, preliminary injunctions and permanent injunctions, both mandatory and prohibitory. Subject to the limitations contained in this Declaration, the parties hereto shall have all remedies, at law or in equity, in order to enforce the terms of this Declaration.

10. Rights And Obligations Of Lenders. If by virtue of any right or obligation set forth herein a lien shall be placed upon any Tract in the Project, except as provided in Sections 7 and 8, such lien shall expressly be subordinate and inferior to the lien of any first lienholder now or hereafter placed on such Tract; provided, however that upon foreclosure by such first lienholder, any assessment recorded (pursuant to Section 9) prior to such foreclosure, and any post foreclosure assessment, shall be and become the obligation of the party coming into title to such Tract. Except as set forth in the preceding sentence, any holder of a first lien on any Tract in the Project and any assignee or successor in interest of such first lienholder, shall be subject to the terms and conditions of this Declaration.

11. Expansion Of Shopping Center. The parties hereto agree that in the event the Shopping Center is expanded by an entity in the ownership or control of the parties or by 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 5a(ii). A memorandum of such expansion shall be recorded in the land records as an amendment hereto.
12. Release From Liability. Any person acquiring fee or leasehold title to any Tract in the Project or any expansion of the Shopping Center pursuant to Section 11 or any portion thereof, shall be bound by this Declaration only as to the rights and obligations pertaining to the Tract or portion of the Tract acquired by such person. In addition, subject to Section 9, such person shall be bound by this Declaration 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 from liability under this section, the easements, covenants and restrictions in this Agreement shall continue to be benefits to and servitudes upon said Tracts running with the land.
13. Limitations on Enforcement Proceedings.
- A. In the event of breach or threatened breach of this Declaration, only all record owners of Tract 1 as a group, or Wal-Mart so long as it or any successor affiliate of Wal-Mart has an interest as owner or lessee of Tract 1, shall be entitled to institute proceedings, at law or in equity, for full and adequate relief from the consequences of said breach or threatened breach, provided, however, this section is not a limitation on the assessment powers of the parties hereto, as provided for in Section 9 and in other subsections hereof referring to Section 9. The unsuccessful party in any action shall pay to the prevailing party a reasonable sum for attorney's fees, accruing from the date such action was filed.
 - B. In the event of a breach of the provisions of Section 4.a (the creation of Common Area easements), or an unreasonable abridgement of the privileges herein granted to the owner of Tract 2 pursuant to Section 4.c, the owner of Tract 2 shall be entitled to institute proceedings for full and adequate relief from the consequences thereof. The unsuccessful party in any action shall pay to the prevailing party a reasonable sum for attorney's fees, accruing from the date such action was filed.
14. Rights of Successors. The easements, restrictions, benefits and obligations hereunder shall create mutual benefits and servitudes running with the land. This Declaration shall bind and inure to the benefit of the parties hereto, their respective heirs,

representatives, lessees, successors and assigns; provided, however no successor-in-interest to Developer hereunder shall succeed to the rights or obligations specifically reserved or granted to Developer unless either (a) Developer fully and completely assigns those rights to one (1) third party of record or (b) Developer no longer has fee title to any Tract in the Project, and the third party successor is the owner of Tract 2. This Declaration shall bind and inure to the benefit of all other owners of the Tracts within the Project as provided herein. The singular number includes the plural and the masculine gender includes the feminine and neuter.

15. **Document Execution, Modification and Cancellation.** This Declaration (including exhibits) may be amended or cancelled only by the mutual agreement of (a) Wal-Mart as long as it or its affiliate has any interest as either owner or lessee of Tract 1, and (b) Developer as long as it has any interest as either owner or lessor of Tract 2. If Wal-Mart or its affiliate no longer has any interest in Tract 1, such amendment or cancellation may only be made by the then owner of Tract 1 and Developer or its successor Developer as described in Section 14.
16. **Non-merger.** So long as Wal-Mart or its affiliate is owner or lessee of Tract 1, this Agreement shall not be subject to the doctrine of merger.
17. **Duration.** Unless otherwise cancelled or terminated, all the easements granted in this Declaration shall continue in perpetuity and all other rights and obligations hereof shall automatically terminate and be of no further force and effect after ninety-nine (99) years from the date hereof.
18. **No Implied Covenant to Operate.** It is expressly agreed by the parties hereto, for their own benefit and that of their successors-in-interest, that:

Nothing contained in this Declaration shall be construed to contain a covenant, either express or implied, to either commence the operation of a business or thereafter continuously operate a business upon Tract 1. Developer recognizes and agrees that Wal-Mart may, at Wal-Mart's sole and absolute discretion and at any time during the term of this Agreement, cease the operation of its business, upon Tract 1, and Developer hereby waives any legal action for damages or for equitable relief which might be available to Developer or any of its successors in interest because of such cessation of business activity by Wal-Mart or its successor-in-interest.
19. **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.
20. **Entire Agreement.** This Declaration constitutes the entire agreement between the parties hereto. The parties hereto do not rely upon any statement, promise or representation not herein expressed, and this

Declaration 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.

21. Covenants Running with the Land. The covenants, conditions, restrictions and easements contained herein shall run with the land, shall constitute equitable servitudes upon each tract in favor of the other tract and shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto.
22. Benefit to Tract 2. The parties hereto expressly acknowledge and agree that Tract 2 shall benefit from, and be burdened by, the provisions of this Declaration only as specifically set forth herein. The owner, lessee or user of Tract 2 shall not have the right to claim that any right or easement herein granted for the benefit of Tract 1 also benefits Tract 2 unless such right or easement is expressly granted herein to and for the benefit of Tract 2, and no party hereto shall have the right to claim that any right or easement granted for the benefit of the other Tract also benefits or burdens Tract 2 unless expressly granted by Developer as the owner of Tract 2.
23. Notice. Any notice, request, demand, instruction or other communication required by the Declaration to be given to any third party, including, but not limited to, a notice of assessment, shall be in writing and shall be either (a) personally delivered to the parties named below, or the party otherwise entitled thereto, by a commercial messenger service regularly retaining receipts for such delivery, (b) sent by registered or certified mail, return receipt requested, or (c) delivered by the air courier services known as Federal Express, Express Mail, Airborne, or Emery Air, and such notice shall be effective upon delivery thereof to the party being given notice, and shall be addressed to the parties as listed below:

Developer: Gateway Associates
 12625 High Bluff Drive, Suite 304
 San Diego, California 92130
 Attention: Frank Gatlin

To Wal-Mart: Wal-Mart Stores, Inc.
 702 Southwest Eighth Street
 Bentonville, Arkansas 72716
 Attention: President

and Property Manager (same address)

If Developer or Wal-Mart desires to change its address for the purpose of receipt of notice, such notice or change of address shall be given in the manner specified herein. However, unless and until such written notice of change is actually received, the last address and addressee as stated by written notice, or provided herein if no written notice of change has been received, shall be deemed to

continue in effect for all purposes hereunder. This notice provision shall be inapplicable to any judicial or nonjudicial proceeding where California law governs the manner and timing of notice, commencing and prosecuting an action, commencing and prosecuting a foreclosure, or seeking the appointment of a receiver.

24. **Election of Remedies.** In addition to the rights, powers and remedies given in this Declaration to Wal-Mart and Developer or its successor as designated in Section 14, each of them may, in their own absolute discretion, at any time, and from time to time, exercise any and all rights and powers, and pursue any and all remedies now or hereafter given at law or in equity, including but not limited to any rights or remedies granted herein or by California or Federal case, statutory or regulatory law. Their failure to exercise any such right or remedy shall be deemed a waiver of that right or remedy unless the party entitled to that right or remedy has so agreed, expressly and in writing, and the failure to so exercise any right or remedy shall not preclude the party entitled thereto from later exercising any such right or remedy. The written waiver of any default hereunder given by only one of Developer or Wal-Mart shall not be binding upon the other party hereto if such default was by a third party. Any written waiver of default shall not constitute a continuing waiver or waiver of any other same, similar or different events of default on any future occasion, unless such a waiver of such future defaults is expressed, in writing, with precision. No course of dealing between any party hereto, or any owner, tenant, lessee, or user of the tracts in the Project, or any encumbrancer thereof, in exercising any rights under this Declaration shall operate as a waiver of such rights, nor shall any such delay, unless agreed to in writing by the parties entitled to enforce this Declaration, constitute a waiver of any obligation or default. No waiver of default shall extend to or impair any other obligation not expressly waived, nor impair any right otherwise consequent on such covenant, provision or obligation. Any waiver may be given subject to satisfaction of conditions stated therein. No power or remedy herein conferred is exclusive of or shall prejudice any other power or remedy given by law or by the terms of this Declaration, nor shall any party hereto be forced to make any election of remedies.
25. **Waiver of Setoff/Counterclaim.** Each party hereto, for its own benefit and for the benefit of all of its successors and assigns, including but not limited to all parties with interests in the Project or any tract or building which forms a portion thereof, hereby waive any and all rights of setoff, recoupment, and counterclaim with respect to assessments and obligations due under the terms of this Declaration, including rights of setoff, recoupment, and counterclaim with respect to the Project which may

arise from claims, transactions or occurrences heretofore or in the future unknown to the claimant.

26. Time of the Essence. Time is of the essence with regard to performance under the terms and provisions of this Declaration, and any amendment, modification or revision thereof, with respect to the actions and obligations of each person bound by the terms hereof. No extension of time for payment of any sum due hereunder shall operate to release, discharge, modify, change, or affect the original liability as established hereunder, either in whole or in part. In accepting an interest in any tract in the Project, each owner, tenant, lessee, user, and mortgagee, and trust deed beneficiary shall be deemed to take its interest knowingly and willingly subject to this time is of the essence clause.
27. Severability. Invalidity of any of the provisions contained in this Declaration, or of the application thereof to any Person by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other Person and the same shall remain in full force and effect.
28. Negation of Partnership. None of the terms or provisions of this Declaration shall be deemed to create a partnership between or among the Parties in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. Each Party shall be considered a separate owner, and no Party shall have the right to act as an agent for another Party, unless expressly authorized to do so herein or by separate written instrument signed by the Party to be charged.
29. Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Shopping Center or of any Tract or portion thereof to the general public, or for any public use of purpose whatsoever. Except as herein specifically provided, no right, privileges or immunities of any Party hereto shall inure to the benefit of any third-party person, nor shall any third-party person be deemed to be a beneficiary of any of the provisions contained herein.
30. Estoppel Certificates. Any party shall, from time to time upon not less than thirty (30) days notice from any other party, execute and deliver to such other party a certificate in recordable form stating that this Declaration is unmodified and in full force and effect or, if modified, that this Declaration is in full force and effect, as modified, and stating the modifications and stating whether or not, to the best of its knowledge, any other party is in default in any respect under this Declaration, and if in default, specifying such default.

92-278276

IN WITNESS WHEREOF, we have hereunto set our hands and seal on the date and year first above written.

WITNESS:

Margaret L. Burnett

(SEAL)

GATEWAY ASSOCIATES, a California
general partnership

John C. Gatto
By: General Partner

ATTEST:

Cal Darby
Assistant Secretary

(SEAL)

WAL-MART STORES, INC.

Michael R. Nelson
Michael R. Nelson
Asst. Vice President of Real Estate

STATE OF CALIFORNIA)

92-278276

COUNTY OF SAN BERNARDINO)
SS.

On JUNE 11, 1992, before me, the undersigned, a Notary Public, personally appeared FRANKLIN C. GILLEN personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the entity upon behalf of which the person acted, executed the instrument.



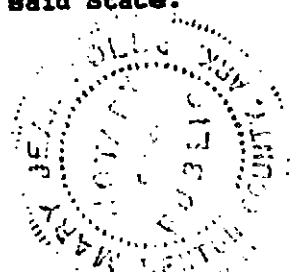
WITNESS my hand and official seal.
Margaret L. Burnett
Notary Public in and for said State.

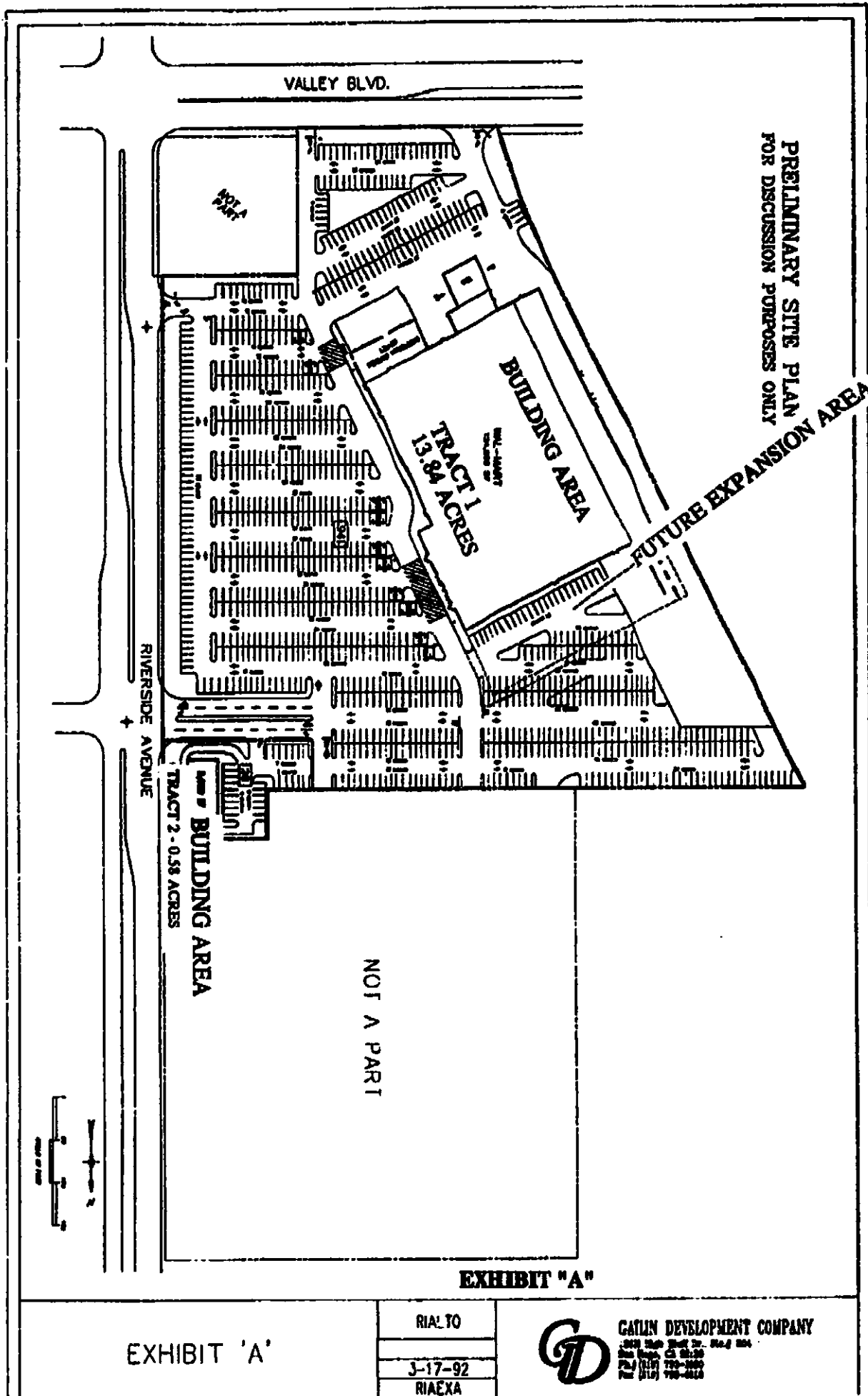
STATE OF ARKANSAS)

COUNTY OF Benton)
SS.

On June 29, 1992, before me, the undersigned, a Notary Public, personally appeared Michael R. Nelson personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.
Mary Jean Boles
Notary Public in and for said State.





TRACT 1

THE EAST 1/2 OF LOT 209, ACCORDING TO MAP SHOWING SUBDIVISION OF LANDS BELONGING TO SEMI-TROPIC LAND AND WATER COMPANY, IN THE CITY OF RIALTO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 11 OF MAPS, PAGE 12, RECORDS OF SAID COUNTY.

AREAS AND DISTANCES OF THE ABOVE-DESCRIBED PROPERTY ARE COMPUTED TO THE CENTER OF ALL ADJOINING STREETS AND ROADS.

EXCEPTING THEREFROM THE SOUTH 70 FEET THEREOF LYING WITHIN VALLEY BOULEVARD (COLTON AVENUE) AND THE EAST 53 FEET THEREOF LYING WITHIN RIVERSIDE AVENUE.

ALSO EXCEPTING THEREFROM THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTH LINE OF COLTON AVENUE, 110 FEET WIDE, AND THE WEST LINE OF RIVERSIDE AVENUE, 88 FEET WIDE; THENCE WEST ALONG THE NORTH LINE OF COLTON AVENUE, 200 FEET; THENCE NORTH PARALLEL WITH THE WEST LINE OF RIVERSIDE AVENUE, 200 FEET; THENCE EAST PARALLEL WITH THE NORTH LINE OF COLTON AVENUE, 200 FEET; THENCE SOUTH ALONG THE WEST LINE OF RIVERSIDE AVENUE, 200 FEET TO THE POINT OF BEGINNING, AS SHOWN PER RECORD OF SURVEY RECORDED IN BOOK 16, PAGE 29, OF RECORD OF SURVEYS, RECORDS OF SAID COUNTY.

ALSO EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE SAN BERNARDINO COUNTY FLOOD CONTROL BY FINAL ORDER OF CONDEMNATION RECORDED APRIL 29, 1980, INSTRUMENT NO. 80-102721, OFFICIAL RECORDS.

TOGETHER WITH THE EAST 1/2 OF THE SOUTH 1/2 OF LOT 204, ACCORDING TO MAP SHOWING SUBDIVISION OF LANDS BELONGING TO SEMI-TROPIC LAND AND WATER COMPANY, IN THE CITY OF RIALTO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 11 OF MAPS, PAGE 12, RECORDS OF SAID COUNTY.

EXCEPTING THEREFROM THE NORTH 68.5 FEET OF THE EAST 268 FEET OF THE EAST 1/2 OF THE SOUTH 1/2 OF SAID LOT 204.

ALSO EXCEPTING THEREFROM THE EAST 53 FEET THEREOF LYING WITHIN RIVERSIDE AVENUE.

AREAS AND DISTANCES OF THE ABOVE DESCRIBED PROPERTY ARE COMPUTED TO THE CENTER OF ALL ADJOINING STREETS AND ROADS.

TOGETHER WITH THOSE PORTIONS OF THE SOUTH 1/2 OF THE WEST 1/2 OF LOT 204 AND OF THE WEST 1/2 OF LOT 209, ACCORDING TO MAP SHOWING SUBDIVISION OF LANDS BELONGING TO SEMI-TROPIC LAND AND WATER COMPANY, IN THE CITY OF RIALTO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 11 OF MAPS, PAGE 12, RECORDS OF SAID COUNTY, LYING EASTERLY FROM THE EASTERLY LINE OF A 100.00 FOOT WIDE STRIP OF LAND BEING 50.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTER LINE:

EXHIBIT "B"

TRACT 1 (Continued)

BEGINNING AT THE INTERSECTION OF THE CENTER LINE OF SAN BERNARDINO AVENUE (60.00 FEET WIDE) WITH THE CENTER LINE OF LILAC AVENUE (60.00); THENCE ALONG THE CENTER LINE OF THAT 75.00 FOOT WIDE STRIP OF LAND DESCRIBED IN DOCUMENT RECORDED IN BOOK 7581, PAGE 257, OFFICIAL RECORDS OF SAID COUNTY, SOUTH 44 DEG. 41' 58" EAST, 1882.02 FEET TO A POINT IN THE CENTER LINE OF WILLOW AVENUE (60.00 FEET WIDE), SAID POINT BEING DISTANT ALONG SAID CENTER LINE SOUTH 00 DEG. 12' 19" EAST, 1341.61 FEET FROM THE INTERSECTION THEREOF WITH THE CENTER LINE OF SAID SAN BERNARDINO AVENUE; THENCE CONTINUING SOUTH 44 DEG. 41' 58" EAST, 186.08 FEET; THENCE SOUTHEASTERLY, 311.87 FEET ALONG A TANGENT CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 1000.00 FEET AND A CENTRAL ANGLE OF 17 DEG. 52' 08"; THENCE SOUTH 26 DEG. 49' 50" EAST, 748.94 FEET; THENCE SOUTHEASTERLY, 263.32 FEET ALONG A TANGENT CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 1040.00 FEET AND A CENTRAL ANGLE OF 14 DEG. 30' 25", TO THE POINT OF TERMINATION IN THE CENTER LINE OF VALLEY BOULEVARD (100.00 FEET WIDE), SAID POINT BEING DISTANT ALONG SAID CENTER LINE, SOUTH 89 DEG. 50' 22" WEST, 586.20 FEET FROM THE INTERSECTION THEREOF WITH THE CENTER LINE OF RIVERSIDE AVENUE.

TOGETHER WITH THAT PORTION OF VALLEY BOULEVARD (COLTON AVENUE) BY RESOLUTION OF THE CITY OF RIALTO, MAYOR AND CITY COUNCIL RESOLUTION NO. 3748. ADJOINING SAID PROPERTY ON THE SOUTH WHICH WOULD PASS BY OPERATION OF LAW BY A CONVEYANCE OF SAID PROPERTY. A CERTIFIED COPY OF SAID RESOLUTION RECORDED SEPTEMBER 3, 1991, INSTRUMENT NO. 91-333971, OFFICIAL RECORDS.

92-278276

TRACT 2

THAT PORTION OF THE SOUTH 70 FEET OF THE EAST 200 FEET OF THE NORTH 1/2 OF LOT 204, ACCORDING TO MAP SHOWING SUBDIVISION OF THE LANDS BELONGING TO SEMI-TROPIC LAND AND WATER COMPANY, IN THE CITY OF RIALTO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 11 OF MAPS, PAGE 12, RECORDS OF SAID COUNTY, DESCRIBED AS FOLLOWS:

THE EAST 53 FEET OF THE SOUTH 70 FEET OF THE NORTH 1/2 OF SAID LOT 204.

EXCEPTING THEREFROM THE SOUTH 40 FEET OF SAID LOT 204, LYING WITHIN RIVERSIDE AVENUE.

EXHIBIT "C"