

R-61717

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EASEMENT AGREEMENT

138745

THIS EASEMENT AGREEMENT ("Agreement") is made as of the 30<sup>th</sup> day of OCTOBER, 1990 by and between Lake County Trust Company, as Trustee under Trust No. 4025, an Indiana corporation ("Grantor") and Wal-Mart Stores, Inc., a Delaware corporation ("Grantee").

**FILED**

DEC 13 1990

WITNESSETH:

WHEREAS, Grantor is the owner in fee simple of certain parcel of land legally described as Lot 7 ("Lot 7") in the Crossroads, being a subdivision of part of the Northwest 1/4 of the Northwest 1/4 of Section 16 and part of the Southwest 1/4 of the Southwest 1/4 of Section 9, both in Township 15 North, Range 9 West of the Second Principal Meridian, Lake County, Indiana according to the plat thereof recorded in Plat Book 69, Page 3, in Lake County, Indiana;

*Done at Antonio*

**STOP**  
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WHEREAS, Grantee is the owner in fee simple of that certain parcel of land legally described as Lot 1 ("Lot 1") in said Crossroads subdivision;

WHEREAS, Lot 7 is located immediately south and adjacent to Lot 1;

WHEREAS, by that certain Easements with Covenants and Restrictions Affecting Land dated February 14, 1990, by and between Grantor and Grantee and recorded February 20, 1990, as Document No. 085156, as modified by that certain First Amendment to Easements with Covenants and Restrictions by and between Grantor and Grantee and recorded August 28, 1990, as Document No. 120042 ("ECR"), the parties subjected Lot 1 and Lot 2 in said Crossroads subdivision to certain easements, covenants, conditions and restrictions more particularly described therein;

WHEREAS, by that certain Declaration of Reciprocal Easements, Covenants and Restrictions dated September 17, 1990, and recorded September 24, 1990, as Document No. 125380 ("Declaration") Grantor reaffirmed certain of the terms of the ECR and related agreements affecting Lots 2, 3, 4, 5, 6 and 7 in said Crossroads subdivision and imposed certain easements, covenants, conditions and restrictions not inconsistent with the ECR and said related agreements on said lots;

WHEREAS, Grantee desires to (i) construct and install (such construction and installation is hereinafter referred to as the "Work") certain parking spaces and curb improvements (the "Parking Facilities") for the benefit of Lot 1, which Work is to be performed, in part, within the northernmost seven (7) foot portion of Lot 7 as depicted on Exhibit A attached hereto and made a part hereof (such area is hereinafter referred to as the

CHICAGO TITLE INSURANCE COMPANY  
INDIANA DIVISION  
STATE OF INDIANA, S.S. No.

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"Easement Area"), and (ii) use the Parking Facilities located within the Easement Area for the parking of passenger automobiles in connection with its business operations on Lot 1; and

WHEREAS, Grantee desires to receive from Grantor a non-exclusive easement appurtenant to Lot 1 (i) to perform that portion of the Work located within the Easement Area, and (ii) to use that portion of the Parking Facilities located within the Easement Area, upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and the mutual agreements hereinafter set forth, the parties agree as follows:

1. Grantor hereby grants to Grantee a nonexclusive easement appurtenant to Lot 1, over, across and upon the Easement Area, for the construction and installation of the Parking Facilities and for the use of the Parking Facilities for parking passenger automobiles in connection with Grantee's business operations on Lot 1, subject to the conditions and limitations herein contained and the provisions of the Declaration and the ECR. The performance of such Work, including all plans and specifications for the Parking Facilities, is subject to Grantor's review and approval. Grantee shall not permit or suffer any mechanic's liens claims to be filed or otherwise asserted against Lot 7 in connection with the Work, and shall promptly discharge the same in case of the filing of any claims for liens or proceedings for the enforcement thereof. Grantee shall pay all costs and expenses of any nature whatsoever relating to the Work.

2. Grantee and its contractors and subcontractors shall be solely responsible for the transportation, safekeeping and storage of materials and equipment used in the Work, for the removal of waste and debris resulting therefrom, and for the prompt repair of any damage caused by them to Lot 7.

3. The Work shall be performed in such a manner and at times so as not to materially interfere with any occupant of Lot 7 or with work being done at Lot 7. In connection therewith, the Work shall comply with all insurance requirements and all laws, ordinances, rules and regulations of all governmental authorities and shall be constructed in a good and workmanlike manner.

4. Prior to commencement of the Work, Grantee shall obtain, at its sole cost and expense, and maintain during the performance of the Work, worker's compensation insurance covering all persons directly employed by Grantee in connection with the Work and with respect to which death or injury claims could be asserted against Grantor or Grantee or against Lot 7, Lot 1 or any interest therein, together with comprehensive general liability insurance for the mutual benefit of Grantor and Grantee with limits

of not less than One Million Dollars (\$1,000,000.00) in respect to any one accident or occurrence, and Five Hundred Thousand Dollars (\$500,000.00) for property damage. All such insurance shall be in a company or companies authorized to do business in the State of Indiana and reasonably satisfactory to Grantor, and all such policies of insurance or certificates of insurance shall be delivered to Grantor prior to commencement of the Work.

5. In the event the Work detrimentally affects the physical condition of Lot 7, or part thereof (other than the Easement Area), Grantee shall immediately restore Lot 7, or part thereof, to its original condition prior to the performance of the Work.

6. It is understood that Grantor shall have the right to construct and install a twenty-four foot (24') wide access drive from Lot 7 to Lot 1 at a location within the Easement Area to be determined by Grantor.

7. Grantee shall defend, indemnify and hold harmless Grantor from any loss, cost, damage (direct or remote, foreseen or unforeseen, consequential or otherwise), cause of action, settlement, liability or expense (including without limitation reasonable attorneys' fees) arising from or related to (i) the performance of the Work, or (ii) the exercise by Grantee, its agents, employees, invitees, licensees and contractors of the rights granted hereunder.

8. This Agreement contains the entire agreement of the parties with respect to the subject matter hereof and all preliminary negotiations with respect to the subject matter hereof are merged into and incorporated in this Agreement, and all prior documents and correspondence between the parties with respect to the subject matter hereof are superseded and of no further force or effect.

9. Nothing herein contained shall be deemed to be a grant or dedication of any portion of Lot 7 to or for the general public or for any public purposes whatsoever, it being the intention of the parties that this Agreement shall be strictly limited to and for the purposes herein expressed.

10. This Agreement shall run with the land and be binding upon and inure to the benefit of Grantor and Grantee and their respective legal representatives, heirs, successors and assigns.

11. Any notice required hereunder shall be in writing and shall be (a) delivered in person or (b) sent by private courier guaranteeing next-day delivery, delivery charges prepaid or (c) sent by United States registered or certified mail, postage prepaid, return receipt requested, or (d) delivered by facsimile,

and, in any case, addressed to the respective parties at the following addresses, or at such other address or addresses designated in writing by the appropriate party;

(a) If to Grantor to:

Rosewood Property Company  
135 South LaSalle Street  
Suite 4410  
Chicago, Illinois 60603  
Attention: John M. Pope, Vice President

with a copy to:

Rosewood Property Company  
500 Crescent Court  
Suite 300  
Dallas, Texas 75201  
Attention: B. Dennis King

(b) If to Grantee to:  
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the Lake County Recorder!

Wal-Mart Stores, Inc.  
702 S.W. 8th Street  
Bentonville, Arkansas 72716  
Attention: President

any notice permitted or required to be given shall be deemed to have been given when personally delivered or one (1) business day after delivery to a courier guaranteeing next-day delivery or two (2) business days after delivery to a United States post office, properly addressed and postage prepaid, for delivery by United States registered or certified mail, or upon transmittal if sent by facsimile provided the sender has received written or oral confirmation the notice or other item sent by facsimile has been received. For purposes hereof, the term "business day" shall mean any calendar day other than Saturday, Sunday or any other day on which banks in Chicago, Illinois are authorized to close.

12. This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana.

13. It is expressly understood and agreed that this Agreement is executed by Lake County Trust Company, not personally but as Trustee as aforesaid, in the exercise of the power and authority conferred upon and invested in it as such Trustee. It is further expressly understood and agreed that Lake County Trust Company, as Trustee as aforesaid, has no right or power whatsoever to manage, control or operate said Premises in any way or to any extent and is not entitled at any time to collect or receive for any purpose, directly or indirectly, the rents, issues, profits or

proceeds of said Premises or any lease or sale or any mortgage or any disposition thereof. Nothing in this Agreement contained shall be construed as creating any personal liability, or personal responsibility of the Trustee, and, in particular, without limiting the generality of the foregoing, there shall be no personal liability to pay any indebtedness accruing hereunder or to perform any covenant, either expressly or impliedly herein contained, or to keep, preserve or sequester any property of said Trust or for said Trustee to continue as said Trustee; and that so far as the parties herein are concerned the owner of any indebtedness or liability accruing hereunder shall look solely to the trust estate from time to time. It is further understood and agreed that the said Trustee has no agents or employees and merely holds naked title to the Premises herein described and has no control over the management thereof or the income therefrom and has no knowledge respecting rentals, leases or other factual matter with respect to the Premises, except as represented to it by the beneficiary or beneficiaries of said Trust. Nothing contained herein shall be construed as creating any liability on Lake County Trust Company, personally under the provisions of the Comprehensive Environmental Response, Compensation and Liability Act, (CERCLA) or the Indiana Responsible Property Transfer Law (the Act) as amended from time to time or any other Federal, state or local law, rule or regulation. Lake County Trust Company, personally is not a "transferor" under the Act and makes no representations concerning any possible environmental defects. In making any warranty herein, the trustee is relying solely on information furnished to it by the beneficiaries and not of its own knowledge, and specifically exculpates itself from any liabilities, responsibilities or damages as a result of including any warranty in this Agreement. The foregoing provisions are intended solely to exculpate Lake County Trust Company from individual liability hereunder, but nothing herein contained shall relieve seller's trust assets from any liability or obligation undertaken by Seller in this Agreement, including, but not limited to rents, proceeds or insurance and proceeds of condemnation.

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

GRANTOR:

LAKE COUNTY TRUST COMPANY,  
as Trustee, as aforesaid

By: Karyn M. Zasada  
Its: Karyn M. Zasada, Trust Officer

GRANTEE:

WAL-MART STORES, INC.

By: Lucretia A. Baulaw  
Its: VICE PRESIDENT

Attest:

By: Charlotte L. Keilman  
Charlotte L. Keilman, Asst. Trust Officer



This instrument was prepared by  
and after recording return to:

D. Albert Daspin  
Winston & Strawn  
35 West Wacker Drive  
Chicago, Illinois 60601

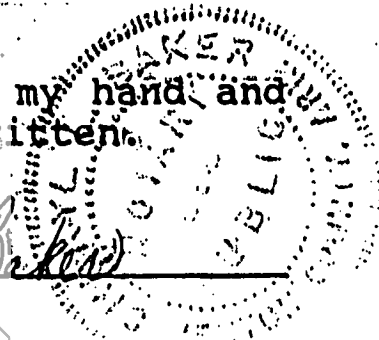
STATE OF ARKANSAS    )  
                                  )  
COUNTY OF BENTON    )

Be it remembered that on this 30<sup>th</sup> day of October, 1990, before me a notary public in and for the county and state aforesaid, came CURTIS H. BALLOW, 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 by notary seal the day and year last above written.

**NOT OFFICIAL**

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Notary Public  
the Lake County Recorder!



((SEAL))

My commission expires 12-1, 1999.

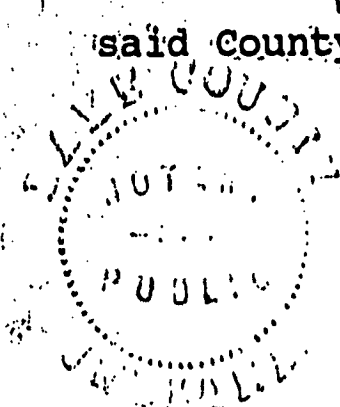
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STATE OF Indiana  
COUNTY OF Lake

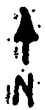


I HEREBY CERTIFY that on this day before me, an officer duly authorized in the state aforesaid and in the county aforesaid to take acknowledgements, personally appeared Karyn M. Zasada & Charlotte L. Keilman to me known and known to be the person described in and who executed the foregoing instrument as the Trust Officer & Asst Trust Officer of Lake County Trust Company, an Indiana corporation, and he severally acknowledged before me that he executed the same as such officer, that he was authorized so to do, and that such is the act and deed of said corporation.

WITNESS my hand and official seal at Crown Point, In. in said County and State, this 4th day of December, 1990.

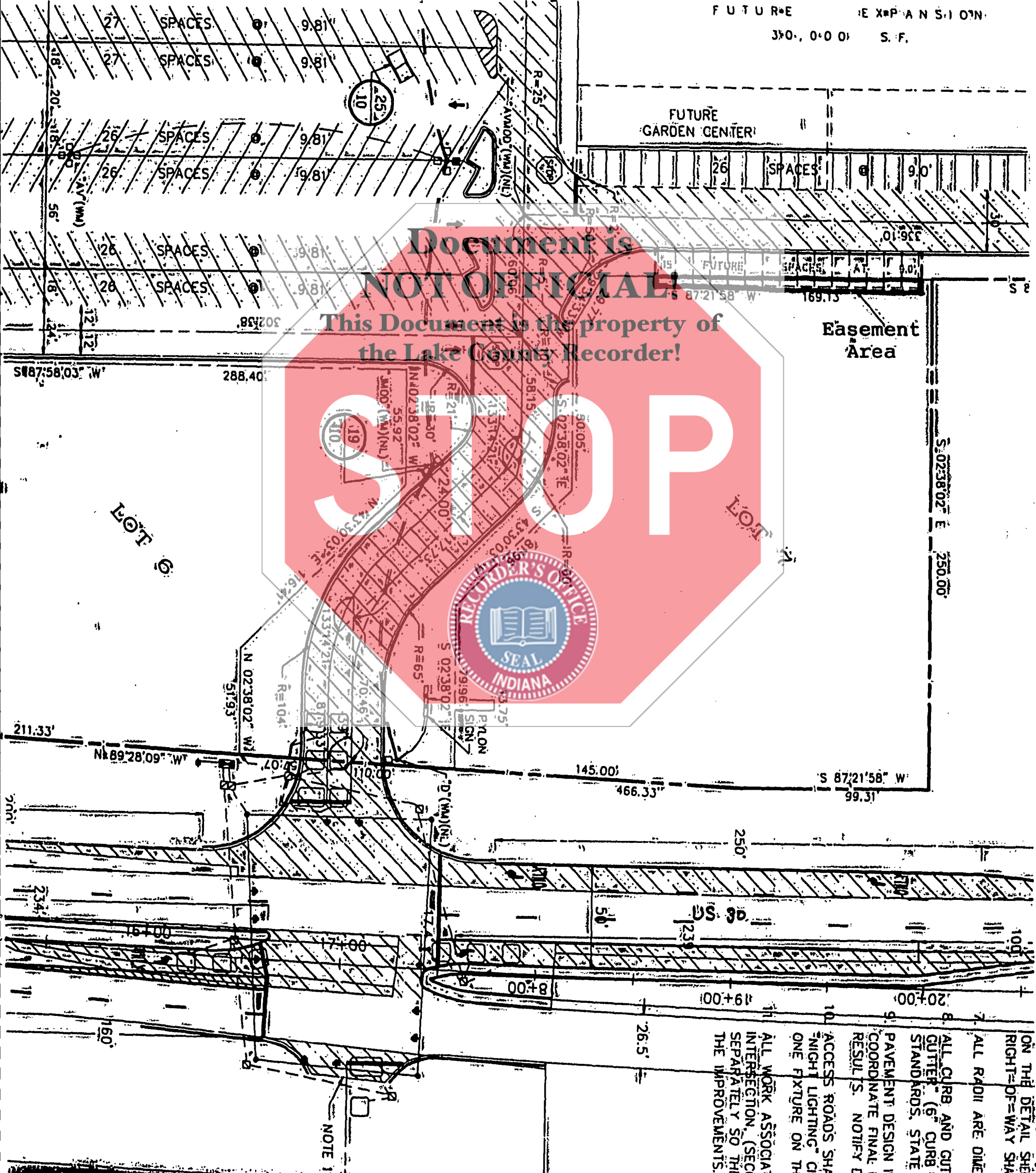


Angelina Bravos  
Notary Public, State of Indiana  
Angelina Bravos  
My Commission Expires May 15, 1993



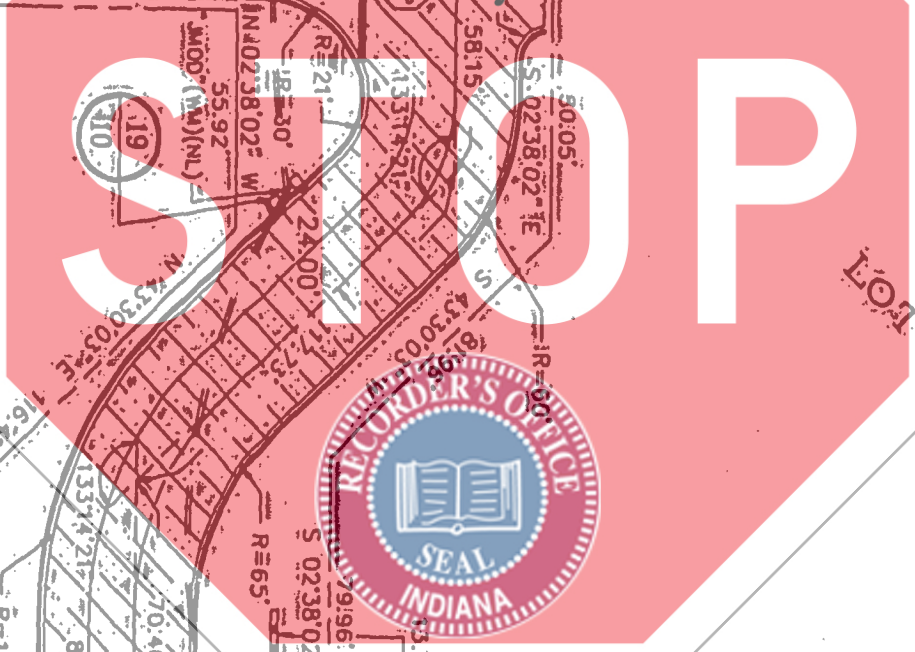
Grantor shall have the right to construct and install a 24 foot wide access drive from Lot 7 to Lot 1 through the Easement Area at a location to be determined by Grantor.

FUTURE EXPANSION  
330,000 S.F.



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- 10 ALL CURB AND GUTTER (6" CURB) STANDARDS, STATE
- 9 PAVEMENT DESIGN COORDINATE FINAL RESULTS, NOTIFY
- 8 ACCESS ROADS SHALL NIGHT LIGHTING ON ONE FIXTURE ON THE
- 7 ALL WORK ASSOCIATED INTERSECTION, (SECC) SEPARATELY SO THE IMPROVEMENTS.
- 6 ALL RADII ARE DIME
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NOTE 11