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APR 20 2004

KLAMATH COUNTY
PLANNING DEPARTMENT

Vol M04 Page 24027

When recorded, return to:

OZ INVESTMENT L L C
c/o Mark Zimal
13500 SW 72nd Ave, Ste 210
Portland, OR 97223

State of Oregon, County of Klamath
Recorded 04/22/2004 9:26 a.m.
Vol M04 Pg 24027-32
Linda Smith, County Clerk
Fee \$ 46.00 # of Pgs 6

DECLARATION OF EASEMENT

April, 2004, by OZ INVESTMENT, L.L.C., an Oregon limited liability company ("Declarant").

WITNESSETH

WHEREAS, Declarant is the owner of that certain parcel of land situated in Klamath County, Oregon, legally described on Exhibit A attached hereto (the "Easement Property"), as depicted on Exhibit B attached hereto;

WHEREAS, Declarant is also the owner of certain property contiguous to the Easement Property as legally described on Exhibit C attached hereto (the "Shopping Center Property");

WHEREAS, Declarant will convey a portion of the Shopping Center Property to Wal-Mart Real Estate Business Trust, a Delaware statutory trust ("Wal-Mart"), and whereas Wal-Mart already owns property contiguous to the Shopping Center Property (the "Wal-Mart Existing Property").

WHEREAS, Klamath County has required Declarant to establish, for the benefit of the Shopping Center Property and the Wal-Mart Existing Property, an extended public non-exclusive easement for pedestrian and vehicular access over and across the Easement Property.

WHEREAS, the Shopping Center Property and the Wal-Mart Existing Property are subject to that certain Easements With Covenants and Restrictions Affecting Land dated May 21, 1991, and recorded July 25, 1991, at Recording No. 31086 in the real estate records of Klamath County, Oregon (as amended from time to time, the "ECR"), which ECR, among other things, established joint use easements for ingress, egress and access across the common areas within the Shopping Center Property and the Wal-Mart Existing Property.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Declarant declares as follows:

1. **Easement.** Declarant does hereby grant and dedicate, for the benefit of the Shopping Center Property and the Wal-Mart Existing Property and Wal-Mart, a public extended non-exclusive easement for pedestrian and vehicular ingress and egress over and across the Easement Property to and from Washburn Way (Highway 420) on the eastern boundary of the Easement Property and from and to the Shopping Center Property and the Wal-Mart Existing Property. The Easement Property connects to and extends the existing easements over the common areas within the Shopping Center Property as provided in the ECR.

2. **User of Easement Property.** The access rights granted hereto are for public pedestrian and vehicular ingress and egress over the Easement Property and may be used non-exclusively by any person for the purpose described in Section 1, above.

3. **Maintenance and Insurance.** Maintenance of and taxes for the Easement Property and insurance and indemnity obligations with respect to the Easement Property shall be allocated between the parties to the ECR in the same manner that maintenance obligations and taxes are allocated for easement areas under the terms of the ECR.

4. **Duration.** The agreements contained herein and the rights granted hereby shall run with the titles to the Easement Property, the Shopping Center Property and the Wal-Mart Existing Property, perpetually until modified in accordance with Section 5, below, and shall bind and inure to the benefit of the Declarant and Wal-Mart and their respective heirs, successors and assigns.

5. **Modification.** This Declaration, and the Easement granted hereby, may not be modified or terminated without the express consent of Declarant, its successors and assigns, and Wal-Mart (for so long as Wal-Mart has an ownership or lease interest in the Shopping Center Property or the Wal-Mart Existing Property) and Klamath County. Nothing herein shall be construed to require the consent of Klamath County with respect to any changes to the ECR other than rights expressly established pursuant to this Declaration.

6. **Headings.** The headings of the paragraphs contained herein are intended for reference purposes only and shall not be used to interpret the agreements contained herein or the rights granted hereby.

24029

IN WITNESS WHEREOF, the Declarant hereto has executed this instrument the day and year first above written.

DECLARANT:

OZ INVESTMENT, L.L.C., an Oregon limited liability company

By: 

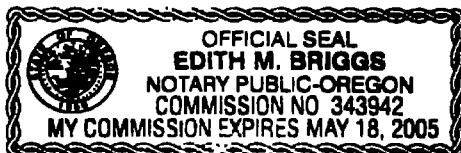
Mark S. Zimel
Its Member

State of Oregon:

County of ~~Klamath~~ *Washington*

The foregoing instrument was acknowledged before me this 12th day of April, 2004, by Mark S. Zimel the Member for Oz Investment, L.L.C., an Oregon limited liability company.

(Seal and Expiration Date)




Notary Public

LEGAL DESCRIPTION

A PORTION OF LOT 10 OF THE PLAT OF "TRACT 1276", KLAMATH COUNTY PLAT RECORDS, LOCATED IN THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 39 SOUTH, RANGE 9 EAST, WILLAMETTE MERIDIAN, CITY OF KLAMATH FALLS, KLAMATH COUNTY, STATE OF OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 10, BEING ON THE WEST RIGHT-OF-WAY LINE OF WASHBURN WAY;

THENCE S00°02'00"E, ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 5.00 FEET TO THE **POINT OF BEGINNING**;

THENCE S00°02'00"E, CONTINUING ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 41.50 FEET;

THENCE S89°58'00"W, LEAVING SAID RIGHT-OF-WAY LINE, A DISTANCE OF 179.00 FEET TO THE BEGINNING OF A TANGENT CURVE;

THENCE ALONG THE ARC OF A 25.00 FOOT RADIUS CURVE CONCAVE SOUTHEASTERLY, (THE CHORD OF WHICH BEARS S44°58'00"W, 35.38 FEET) THROUGH A CENTRAL ANGLE OF 90°00'00", AN ARC DISTANCE OF 39.27 FEET TO A POINT OF NON-TANGENCY;

THENCE S89°58'00"W, A DISTANCE OF 5.00 FEET TO THE WEST LINE OF SAID LOT 10;

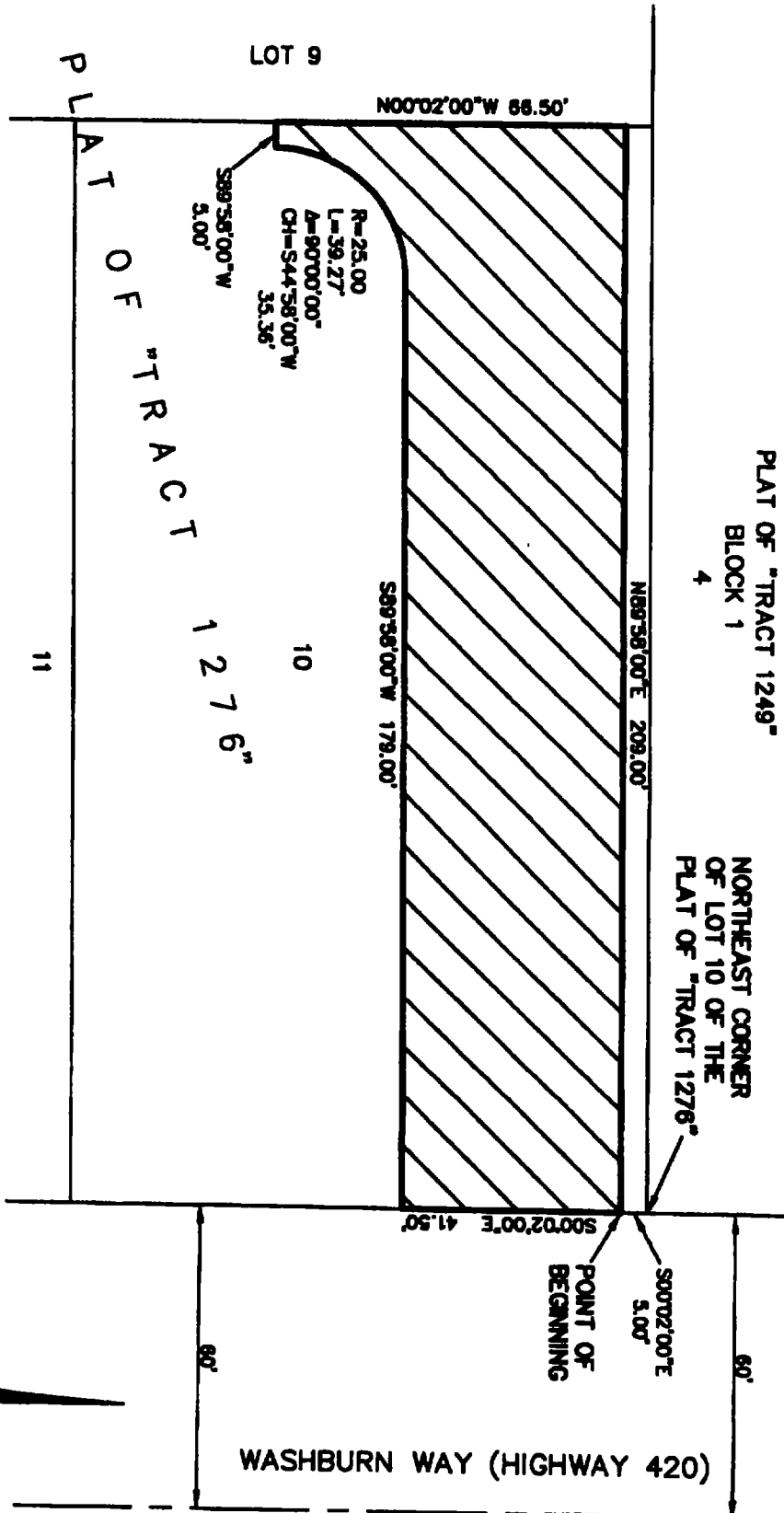
THENCE N00°02'00", ALONG THE WEST LINE OF SAID LOT 10, A DISTANCE OF 66.50 FEET;

THENCE N89°58'00"E, ALONG A LINE PARALLEL WITH AND OFFSET 5.00 FEET SOUTH OF THE NORTH LINE OF SAID LOT 10, A DISTANCE OF 209.00 FEET TO THE **POINT OF BEGINNING**.

CONTAINS 8,933 SQUARE FEET, MORE OR LESS.

EXHIBIT MAP (REVISED 01/28/2004)

BEING A PORTION OF LOT 10 OF THE PLAT OF "TRACT 1276"
 IN THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 39 SOUTH, RANGE
 9 EAST, WILLAMETTE MERIDIAN CITY OF KLAMATH FALLS,
 KLAMATH COUNTY, OREGON
 JANUARY 19, 2004



JOB NO.: PL51017
TETSUKA ASSOCIATES, INC.
 LAND SURVEY CONSULTING
 9900 S.W. WILSON STREET, #110
 PORTLAND, OR 97225
 503.517.0682 FAX: 503.445.1300



SCALE: 1"=30'

EXHIBIT C

(Legal Description of Lots 1, 2 and 3)

Lots 1, 2 and 3 of Partition Plat No. 23-03 of _____, recorded
_____, records of Klamath County, Oregon..