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Doris Tate, County Clerk and Recorder

170205

BILL OF ASSURANCES AND PROTECTIVE COVENANTS
OF FORT CHAFFEE INDUSTRIAL PARK NO. 1

KNOW ALL MEN BY THESE PRESENTS, THAT:

WHEREAS, pursuant to the Defense Base Closure and Realignment Act of 1990 (DBCRA), PL 101-510, as amended and codified at 10 U.S.C. 2687, note (BRAC), the military installation known as the Ft. Chaffee Military Reservation, Arkansas (FCMR) was closed on September 30, 1997; and

WHEREAS, the Ft. Chaffee Redevelopment Authority, an Arkansas Public Trust (hereafter, the "Trust"), acknowledged as the Public Trust for FCMR under Arkansas Code Annotated § 12-63-103 and recognized as the local redevelopment authority for FCMR by the Office of Economic Adjustment on behalf of the Secretary of Defense; was granted the authority to oversee and implement the civilian reuse of the excess portion of FCMR, including the lands described herein, in accordance with a local-approved reuse plan; and

WHEREAS, the Trust made an application to the Army for a no-cost Economic Development Conveyance (EDC) of the lands described herein, under Section 2821 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L.106-65); and Section 2905(b)(4) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note) as amended; and

WHEREAS, the Army, as authorized by BRAC and implementing regulations, determined that the Trust's application met the criteria for economic development, and job creation; and

WHEREAS, the Army and the Trust have entered into a Memorandum of Agreement dated

the 5th day of September, 2000 (hereinafter referred to as the "MOA") establishing the terms and conditions for an EDC of certain surplus portions of the FCMR property to the Trust including the lands described herein; and

WHEREAS, pursuant to the power and authority provided in Section 2905(b)(4) of the DBCRA, the implementing regulations of the Department of Defense (32 CFR Part 91), and the terms and conditions of the MOA; the Army conveyed to the Trust (with other lands), Industrial Tract 1 described in Exhibit A hereto (hereinafter referred to as the "Property") by Quitclaim Deed (the "Quitclaim Deed") dated November 15, 2000 and recorded in the deed records of the Greenwood District of Sebastian County, Arkansas as Document No. 7030813; and

WHEREAS, the Quitclaim Deed imposes numerous restrictions and burdens on the Property which are incorporated herein by this reference.

NOW, THEREFORE: The Trust declares that it has a general plan to develop the Property as an industrial park and pursuant to that general plan of development and the Reuse Plan for FCMR as amended from time to time, hereby makes the following declarations as to limitations, restrictions and uses to which any lots and/or tracts within the Property may be put, hereby specifying that said declaration shall constitute covenants to run with all of the Property and each internal lot or tract, as provided by law, and shall be binding on all parties now owning or hereafter acquiring title to any lot, or tract of the Property and all persons claiming under them and for the benefit of and limitation upon all future owners of any part thereof; this declaration of restriction being designed for the purpose of keeping said Property desirable, uniform and suitable in architectural design and use as herein specified:

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I.

USE RESTRICTIONS

This Industrial Park can accommodate only low impact industrial development and supporting retail and commercial or public uses, including traditional light manufacturing operations, as well as, newer hybrid types of businesses that combine several activities such as office, research, assembly and storage into one facility and a limited amount of non-industrial service uses that are intended to support the primary businesses. Noise, odor, dust and glare produced should be confined within an enclosed building and any outside storage of materials or products not offered for sale will require opaque screening. Residential development is excluded from the Property; both to protect residents from an undesirable environment and to facilitate maximum efficiency of industrial activity.

A. Permitted Uses. No buildings, structures, land or premises shall be allowed on the Property unless they conform to the provisions of this Bill of Assurances. No buildings or structures on this Property shall be constructed, reconstructed or altered unless they conform with the provisions of this Bill of Assurances:

1. General Uses. The general uses allowed on the Property are as follows:

(i) Contractors offices and shops; (ii) Motor vehicle service and repair; (iii) Wholesale trade establishments; (iv) Distribution facilities; (v) Light manufacturing facilities; (vi) Research and development facilities; (vii) Warehousing facilities; and (viii) Utilities systems and appurtenances.

2. Conditional Uses. The conditional uses allowed on the Property are as follows: (i) Commuter parking lot and (ii) Conference or training center.

B. Additional Uses. It is recognized that every conceivable use cannot be identified

in this Bill of Assurance and that new ones will evolve over time. Therefore, when a use is not specifically listed in this Bill of Assurances, it may be allowed if the Architectural Control Committee described in Section II (the "Architectural Committee") makes a favorable determination of suitability based upon the following criteria: (i) the proposed use is consistent with the overall development goals of the Fort Chaffee Redevelopment Authority Reuse Plan as the same may be modified from time to time; (ii) the proposed use meets the intent of the Industrial Park; (iii) the proposed use shall not adversely impact the public health, safety or welfare; (iv) the development will be well integrated into its setting, not be visibly obtrusive, harmonize with surrounding areas, and provide sufficient buffering in the form of spatial separation, vegetation, berms; or other devices; and (v) that the development shall not adversely affect the abutting activities due to the generation of light, noise, dust, smoke, odors, electrical disturbances or other factors.

C. Variations. The Architectural Committee is authorized to grant variances to specific provisions to this Bill of Assurances if hardships are created by inherent factors associated with the physical characteristics of the property in question and provided the variances meet the objectives of the Reuse Plan adopted by the Fort Chaffee Redevelopment Authority as the same is amended from time to time. Each decision of the Architectural Committee will be made on an individual basis and is not to be construed as a precedent for other submissions. The Architectural Committee shall rely on the following criteria when evaluating requests for variances: (i) no substantial diminution of value in surrounding properties will be suffered; (ii) granting the variance will be of benefit to the public interest; (iii) denial of the variance would result in unnecessary hardship to the applicant seeking the variance; (iv) by granting the variance, substantial justice would be done; and (v) the proposed use is not contrary to the spirit of this Bill of Assurances.

D. Bulk and Area Regulations.

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1. Lot Size and Building Set Back Requirements. The following dimensional guidelines shall be applied within the context of concepts described in these Bill of Assurances. The Architectural Committee can make modifications to these minimum dimensions in order to accommodate specific site conditions or developments that require unique building designs or configurations:

- (i) Minimum lot size, 80,000 square feet;
- (ii) Minimum lot width, 200 feet;
- (iii) Minimum front yard, 45 feet;
- (iv) Minimum side yard, 20 feet;
- (v) Minimum rear yard, 50 feet;

2. Maximum Lot Coverage. No more than seventy-five (75) percent of the total area of the lot may be covered by buildings or structures.

3. Separation of Buildings. A fifteen foot minimum separation is required between all buildings or structures on the same building site.

4. Height Regulations. Buildings or structures shall not exceed forty-five (45) feet in height.

5. Gasoline Sales. Gasoline sales are permitted under the following conditions:

a. Pump islands shall be located a minimum of twenty (20) feet from any public right-of-way.

b. Island canopy overhangs shall be located at least ten (10) feet from any public right-of-way and must have a height of at least twelve (12) feet. Supportive posts of canopies

shall be located at least twenty (20) feet from any public right-of-way.

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6. Signs. All signs shall be coordinated with a consistent style throughout the Industrial Park and shall be located and constructed according to standards established by the Architectural Committee.

7. Horizontal Property Regime. The Bulk Area Regulations in this Section I(D) may be modified or eliminated by the Architectural Committee in connection with the establishment on the Property of a Horizontal Property Regime under the Horizontal Property Act (ACA § 18-13-101 et seq) including any amendments thereto.

E. Development Regulations.

1. Maintain in Safe Condition. All areas unoccupied by buildings, parking lots or used as traffic ways shall be maintained in a safe, sanitary and orderly condition.

2. Automobile Merchandise. Automobile service stations may openly display merchandise commonly sold by such operations as long as the area of the display is not taller than the building facade nor larger than an area equal to one-half the area of the front of the building.

3. Storage of Trucks and Trailers. Automobile service stations may be used for the storage of rental trucks or trailers if the storage space is paved and no larger than four thousand (4,000) square feet in area.

4. Residential Uses. All residential uses are prohibited except sleeping facilities required by night watchmen and caretakers employed upon the premises.

5. Outdoor Uses. Uses shall be provided entirely within enclosed buildings, however, outdoor storage of equipment, materials or merchandise not actively offered for sale shall be surrounded by a sight-proof screen which restricts their view from the public.

6. Indoor Uses. No manufacturing, assembly, repair or work activity other than permitted storage or sales shall take place outside the confines of an enclosed building.

7. Outdoor Storage. Areas used for outdoor storage or display shall be maintained so that excessive dust, fumes or odors will not be produced by continued use.

8. Use of Parking Lot. No required parking lot area shall be used as a display or sales area.

9. Use of Sidewalk. No public sidewalk or street right-of-way shall be used for display.

10. Required Screening. A permanent opaque screening fence, wall or landscaped buffer shall be provided along any side and rear property lines which abut property developed for residential purposes, if a setback of less than forty-five (45) feet is utilized. The opaque screening shall be six (6) feet high measured from finished grade to the top of the screen.

11. Auto Facilities. Auto impoundment or holding yards shall be surrounded by a sight proof screen which restricts their view from the public.

12. Maintenance. All lots, whether improved or not, shall be kept mowed, trimmed, clean, neat and in a sanitary condition. This provision shall not apply to any part of the property owned by the Trust. All equipment for the storage and/or disposal of such rubbish, trash, garbage and/or other wastes shall be kept in a clean and sanitary condition.

F. Prohibited Uses. No part of the Property shall be used or maintained as a dumping ground. Rubbish, trash, garbage and/or other wastes shall not be kept except in approved sanitary containers. The limits on the release, emission or escape of dust, fumes, liquids and odors duly established by the State of Arkansas and the United States of America, if any, shall be deemed

minimum standards and may be further regulated and limited by the Architectural Committee. The Architectural Committee may regulate the level of noise which may be perceived from any part of the Property. No part of the property may be used in violation of the covenants and restrictions in the Quitclaim Deed. No part of the Property may be used to construct, operate or maintain an antenna structure or communication tower without approval of the Architectural Committee. The Architectural Committee may establish regulations prohibiting uses and types of construction upon the Property, including but not limited to the use of portable structures.

II.

ARCHITECTURAL CONTROL COMMITTEE

No building, fence, wall, parking area or other improvement shall be erected, placed or altered on any part of the Property until the construction plans and specifications and a plan showing the location of same shall have been approved by the Architectural Committee as to quality of workmanship and materials, harmony of design with the overall plan for development of the Property and as to location with respect to topography and finished grade elevation.

A. Membership. The Architectural Committee shall be composed of the Design Review Committee of the Trust, and the Executive Director of the Trust. A majority of the Architectural Committee may designate a representative to act for it. In the event of the death, termination or resignation of any member of the Architectural Committee, the Trust shall appoint the successor. The members shall serve terms of two (2) years or until their successors are duly appointed. A member of the Architectural Committee may be reappointed repeatedly. The Trust shall have the right to replace any member of the Architectural Committee without cause. Neither the members of the Architectural Committee, nor its designated representative shall be entitled to any

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compensation for services performed pursuant to this covenant. The Architectural Committee's approval or disapproval of any plans or requests shall be in writing. In the event the Architectural Committee, or its designated representative, fails to approve or disapprove within 30 days after plans and specifications have been submitted to it, or in any event if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the related covenants hereto shall have been deemed to have been fully met.

B. Rule Making Authority. The Architectural Committee shall have the authority from time to time to adopt, delete, amend and interpret uniform rules, regulations and requirements applicable to the entire Property as to the types of construction, appearances of buildings, fences, walls, parking areas and other improvements, the establishment of front yard, back yard and side yard set-back requirements, location of improvements, area coverage and height requirements. All plans approved after the adoption or amendment of any such rules or regulations shall be subject thereto.

C. Easements. The location, relocation and size of easements for installation and maintenance of utilities, drainage facilities, roads, streets, and railroad rights-of-way, (herein "Utilities"), may be designated by the Architectural Committee. Within these easements, no structure, planting or other material may be placed or permitted to remain which may damage or interfere with the installation and maintenance of Utilities or which may change the direction or flow of drainage in the easements or which may obstruct or retard the flow of water, and all improvements on it shall be maintained continuously by the owner of the land upon which such easement is located, except those improvements for which a public authority or utility company is responsible. No owner of any part of the Property shall be entitled to any compensation from the Trust or the Architectural Committee or to any reduction in or refund of the purchase price on

account of such easements.

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III.

ENFORCEMENT

A. Covenants Run with the Land. These covenants shall run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date this instrument is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by a majority of the then owners of the square footage of the Property has been recorded, agreeing to amend, supplement, suspend or delete said covenants in whole or in part.

B. Covenant Enforcement. Enforcement of these covenants shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any of these covenants. Violators shall be subject to restraint and an action for damages, as may be allowable. The prevailing party in any such action shall be entitled to recover attorney's fees, expert witness fees and costs.

C. Invalidation. The invalidation of any one of these covenants by judgment or court order shall in no way effect any of the other covenants which shall remain in full force and effect.

IN WITNESS WHEREOF, Fort Chaffee Redevelopment Authority, an Arkansas Public Trust, has by resolution adopted by its Board of Trustees, caused these presents to be executed by its Chairman and Secretary on this 13 day of September, 2001.

FORT CHAFFEE REDEVELOPMENT AUTHORITY,
AN ARKANSAS PUBLIC TRUST

By: David E. Schmidt
Chairman

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Exhibit "A"

Legal Description
Industrial Tract 1 at Fort Chaffee

Revised September 12, 2001

Revised September 11, 2001

September 4, 2001

A part of the Southwest Quarter (SW1/4) of the Southeast Quarter (SE1/4) and a part of the Southeast Quarter (SE1/4) of the Southwest Quarter (SW1/4), part of the Southwest Quarter (SW1/4) of the Southwest Quarter (SW1/4) of Section 5, part of the Northeast Quarter (NE1/4), part of the Northwest Quarter (NW1/4), part of the Southwest Quarter (SW1/4) and a part of the Northwest Quarter (NW1/4) of the Southeast Quarter (SE1/4) of Section 8, all in Township 7 North, Range 31 West, Sebastian County, Arkansas. More particularly described as follows:

Commencing at the Northeast (NE) corner of said Section 8; thence westerly along the north line of said Section 8, 735.9 feet to a point; thence $S03^{\circ}06'29''W$, 22.5' to a point on the southerly right of way of Roberts Boulevard and the POINT of BEGINNING; thence $S86^{\circ}53'31''E$ along said proposed right of way line a distance of 164.04 feet to a point; thence $S44^{\circ}51'08''E$ along said proposed right of way line a distance of 199.40 feet to a point; thence $S18^{\circ}23'45''W$ along said proposed right of way line a distance of 706.71 feet to a point on the proposed Northerly right of way line of Roberts Boulevard; thence $S30^{\circ}44'06''W$ along said proposed right of way line a distance of 498.91 feet to a point; thence $S40^{\circ}11'50''W$ along said proposed right of way line a distance of 3215.21 feet to a point; thence $S88^{\circ}06'21''W$ along said proposed right of way line a distance of 254.10 feet to a point on the proposed Northerly right of way line of Custer Boulevard; thence $N74^{\circ}47'46''W$ along said proposed right of way line a distance of 455.61 feet to a point; thence $S30^{\circ}50'18''W$ along said proposed right of way line a distance of 164.04 feet to a point on the proposed Southerly right of way line of Custer Boulevard; thence $S62^{\circ}38'24''E$ along said proposed right of way line a distance of 589.57 feet to a point; thence $S43^{\circ}03'35''W$ along said proposed right of way line a distance of 328.49 feet to a point on the proposed Westerly right of way line of U.S. Highway 71 Relocation; thence $S49^{\circ}39'35''W$ along said proposed right of way line a distance of 498.91 feet to a point; thence $S59^{\circ}29'13''W$ along said proposed right of way line a distance of 347.59 feet to a point; thence $S67^{\circ}53'48''W$ along said proposed right of way line a distance of 741.10 feet to a point; thence $S68^{\circ}02'18''W$ along said proposed right of way line a distance of 205.39 feet to a point on the proposed Northerly right of way line of Massard Road; thence $N48^{\circ}15'45''W$ along said proposed right of way line a distance of 344.48 feet to a point; thence $N47^{\circ}55'48''W$, 761.58 feet along said northerly right of way to the proposed southeasterly right of way of Chad Colley Boulevard; thence $N42^{\circ}01'30''E$, 974.87 feet along said southeasterly right of way to the point of curvature of a curve to

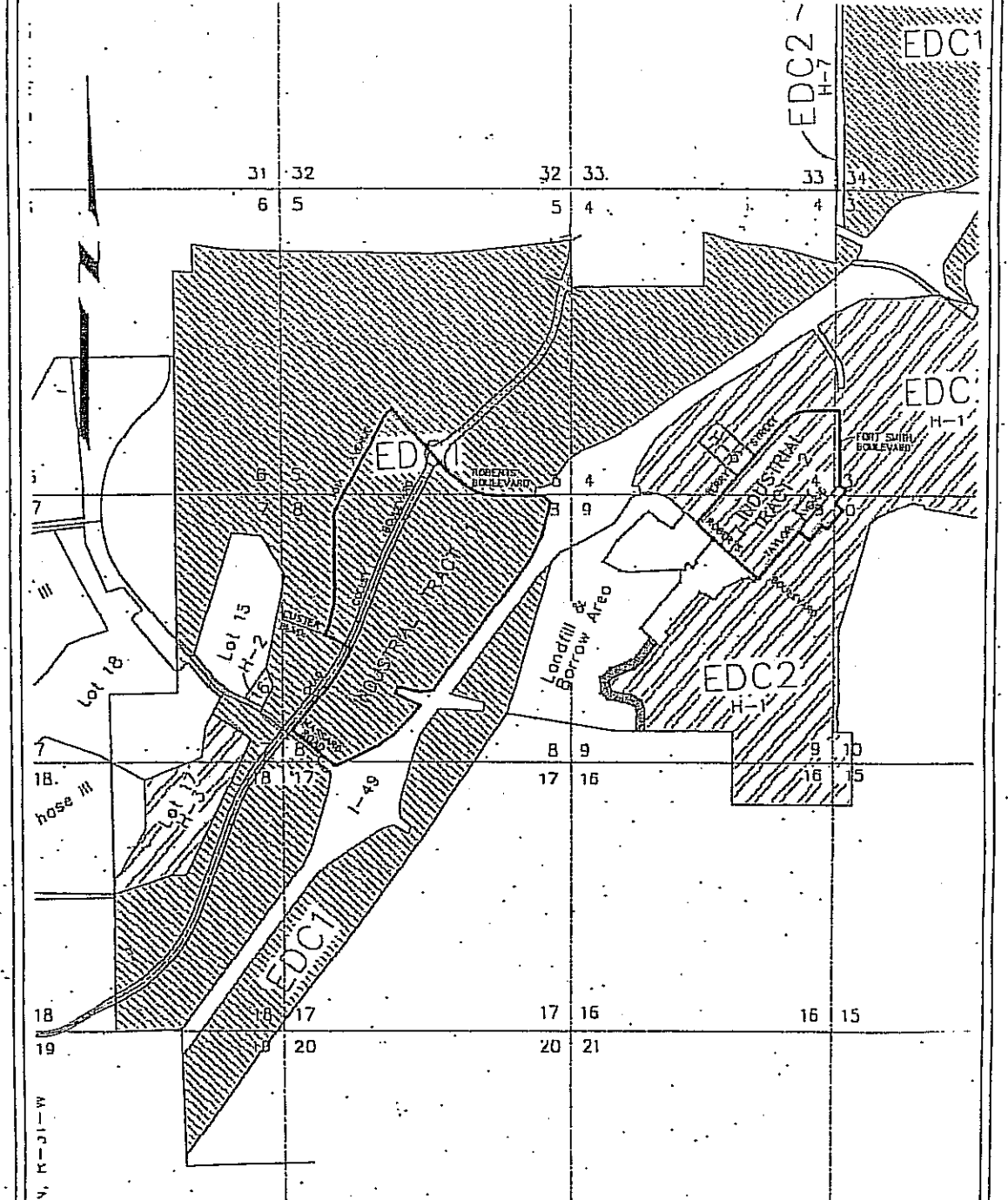
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the left; thence along said right of way on the arc of said curve, 1024.20 feet, said curve having a radius of 5080.00 feet and being subtended by a chord having a bearing of N36°13'36"E and a length of 1026.44 feet to the centerline of Custer Boulevard; thence northwesterly 610 feet more or less along said centerline along to the centerline of 10th Avenue; thence northeasterly 4,725 feet more or less along said centerline of 10th Avenue to the southerly right of way of Roberts Boulevard; thence southeasterly 3,733 feet more or less along said southerly right of way to the POINT of BEGINNING. Containing 408 acres more or less.

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MICKLE-WAGNER-COLEMAN, INC.
Engineers Consultants, Surveyors

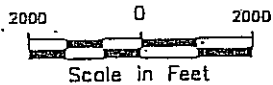
3434 Country Club Avenue
P.O. Box 1507
Fort Smith, Arkansas 72902
17-0218



PROPOSED INDUSTRIAL PARK

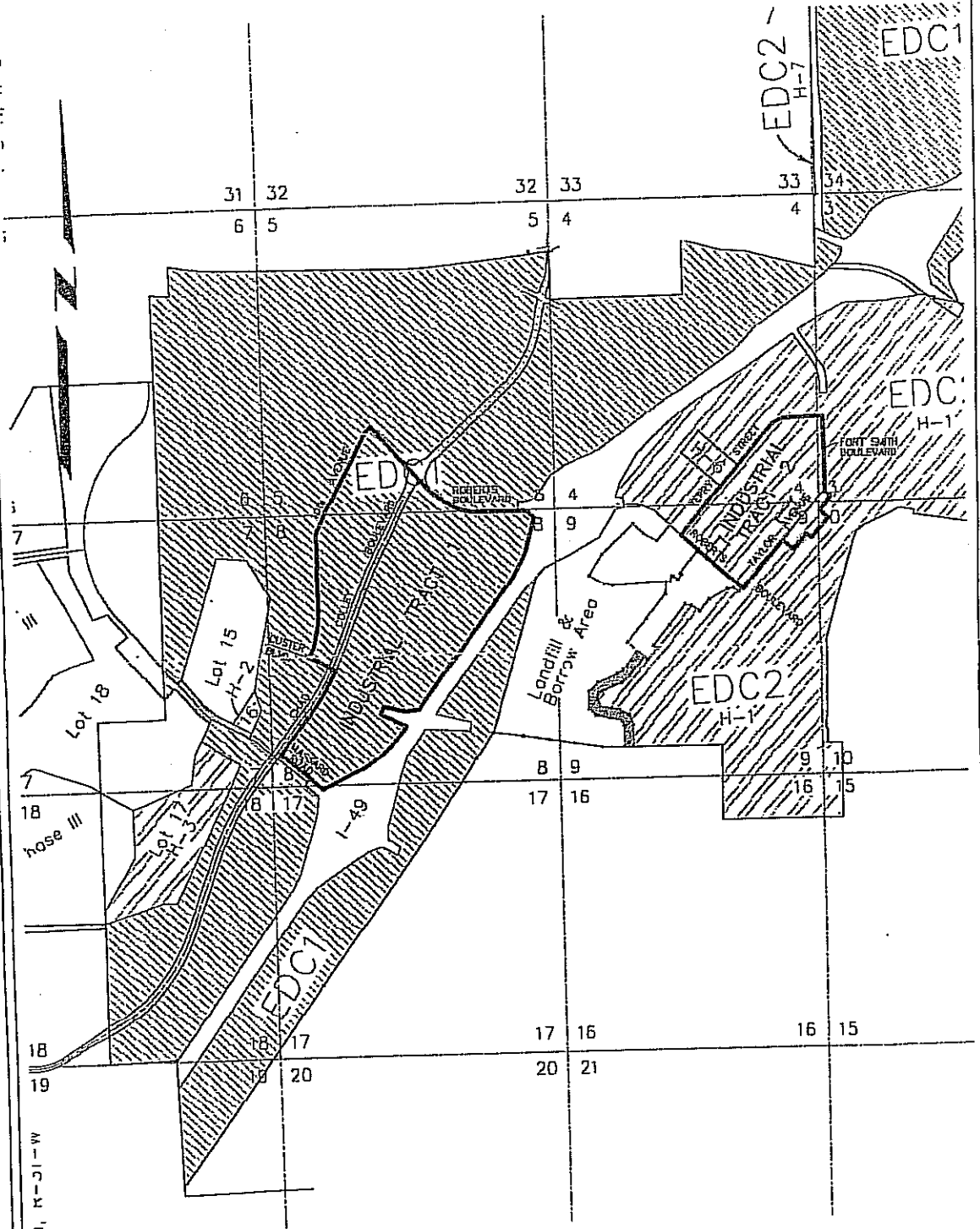
1" = 2000' - September, 2001

CITY OF FORT SMITH
SEBASTIAN COUNTY, ARKANSAS



MICKLE-WAGNER-COLEMAN, INC.
Engineers Consultants Surveyors

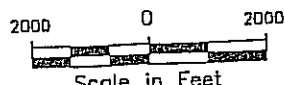
3434 Country Club Avenue
P.O. Box 1507
Fort Smith, Arkansas 72902



PROPOSED INDUSTRIAL PARK

1" = 2000' September, 2001

CITY OF FORT SMITH
SEBASTIAN COUNTY, ARKANSAS



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ATTEST:

By: Joe Edwards, Jr.
Secretary

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss.
COUNTY OF SEBASTIAN)

On this 13 day of September, 2001, before me, a Notary within and for the County of Sebastian, State of Arkansas, duly commissioned and acting, appeared in person Linda Schmidt and Joe Edwards, Jr., to me personally well known to be the Chairman and Secretary of the Fort Chaffee Redevelopment Authority and being first duly sworn upon oath, stated that the information set forth above is true and correct to the best of his/her information, knowledge and belief.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal as such Notary at the County and State aforesaid on this 13 day of September, 2001.

Janet S. Menshek
Notary Public

My Commission Expires:

9/7/10

