

DEVELOPMENT AGREEMENT

Dated APRIL 6th, 2015
among

Columbus Outlets, LLC, Berkshire Township, the Berkshire Landing New
Community Authority, and Delaware County, Ohio

Relating to

ODOT AGREEMENT NO. 18798
DATED November 24, 2014
BETWEEN

THE STATE OF OHIO DEPARTMENT OF TRANSPORTATION AND
THE COUNTY OF DELAWARE, OHIO

FOR THE US 36/ST. RT. 37 AND I-71 CORRIDOR IN BERKSHIRE TOWNSHIP
AND EXISTING ROAD IMPROVEMENTS

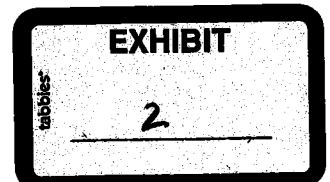
THIS DEVELOPMENT AGREEMENT (the "Agreement") is made among Columbus Outlets, LLC (the "Developer"), Berkshire Township (the "Township"), the Berkshire Landing New Community Authority (the "Authority"), and Delaware County (the "County") under the following circumstances:

RECITALS

A. The Developer proposes to develop an approximately 350,000 square foot outlet center (the "Tanger/Simon Outlets Development") on the 57-acre site identified on **Exhibit A** (the "Tanger /Simon Outlets Site").

B. The County has entered into that certain ODOT Agreement No. 18798, dated November 24, 2014, between the State of Ohio Department of Transportation ("ODOT") and the County, together with Addendum A attached thereto (collectively, the "ODOT Agreement"), to provide for the funding and approval of certain transportation public improvements that, when completed, will benefit the Tanger/Simon Outlets Development, including those transportation improvements identified on **Exhibit B**, attached hereto (the "Opening Day Improvements"), which are to be completed concurrently with the opening of the Tanger/Simon Outlets Development and those transportation public improvements identified on **Exhibit C** (the "Design Year Improvements" and collectively with the Opening Day Improvements, the "Public Improvements") which are anticipated to be required in future years, in response to development needs.

C. The Developer has agreed to bear the up front costs and responsibility for completing the Opening Day Improvements, provided that incentives are put in place that will provide for the reimbursement of the Developer for amounts



expended by the Developer in constructing such public improvements, all as described herein.

D. Pursuant to the ODOT Agreement, the County has appropriated \$8 million (the "County Contribution") to provide for costs of the Public Improvements, pursuant to the ODOT Agreement.

E. Under the ODOT Agreement, the County agreed to secure a guaranty from the Authority for the funding and completion of the Design Year Improvements.

F. The Tanger/Simon Outlets Development is projected by the Developer to generate approximately \$19.7 million in sales taxes for the County during the 10 years immediately succeeding its opening.

G. The County has approved the creation of the Authority to facilitate the development and financing of the Opening Day Improvements and Design Year Improvements.

NOW THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Funding of Opening Day Improvements

The Opening Day Traffic Improvements shall be initially financed and constructed by the Developer. The Developer shall be entitled to reimbursement for its costs of construction, including but not limited to costs associated with the design, rights-of-way/easement acquisition, permitting, construction and financing costs, as that term is defined in Ohio Revised Code Section 133.01, together with interest thereon for the Opening Day Improvements, with the estimate of those costs being \$17,600,000, from the following sources:

- 1.1 Tax Increment Financing. The Township has authorized an exemption from real property taxation of 75% of the improvements (as defined in Revised Code Section 5709.73) attributable to the Tanger/Simon Outlets Development (the "TIF Exemption") for a period of not less than 10 years per parcel exempted and require the owners of the properties so exempted to make annual service payments to the Township in lieu of taxes ("Service Payments") in an amount equal to the taxes that would have otherwise been paid but for the TIF Exemption. Said annual service payments shall be contributed by the County to the Authority and shall be utilized exclusively (i) to reimburse the Developer for its costs incurred in connection with the acquisition and construction of the Opening Day Traffic Improvements or (ii) to pay obligations issued to pay costs of the Opening Day Traffic Improvements (with the proceeds of such obligations being paid to the Developer as reimbursement for its costs incurred in constructing the

Opening Day Traffic Improvements). Any Service Payments remaining to be paid after the full reimbursement of the Developer, or the payment of debt service on obligations to be issued to fund such full reimbursement, shall be used as described in Section 2.1 hereof.

- 1.2 Contribution by the County. The County shall pay to the Developer the full amount so appropriated on or before the initial opening date of the Tanger/Simon Outlets Development; provided, however, the County may require documentation sufficient, in the County's sole discretion, to support the actual costs of the Opening Day Traffic Improvements and may withhold payment to the extent that the actual costs of the Opening Day Traffic Improvements are less than the County Contribution, whereupon the remaining balance of the County Contribution not needed for the Opening Day Traffic Improvements shall be held in reserve by the County for later application towards the costs of the Design Year Traffic Improvements. The earliest date the County shall be required to issue payment, either in whole or in part, shall be within fourteen days after the Developer's delivery of a certificate to the County stating that the Developer has broken ground on the private improvements comprising the Tanger/Simon Outlets Development. The Developer will use such funds only for the purpose of paying costs, or reimbursing itself for paying costs of the Opening Day Improvements.
- 1.3. New Community Authority. The Developer has taken the necessary steps to cause the inclusion of the Tanger/Simon Outlets Site in the Authority. In accordance with a declaration of covenants to be filed by the Developer, as owner of the Tanger/Simon Outlets Site, the Authority will levy a community development charge (the "Charge") equal to $\frac{1}{2}$ of 1 percent of all retail sales occurring on the Tanger/Simon Outlets Site and will provide that the net proceeds of the Charge (after setting aside proceeds of the Charge sufficient to pay administrative expenses associated with the Authority) will, but only if the funds derived from the sources set forth in Sections 1.1 and 1.2 hereof shall be insufficient, be applied to the payment of the costs of the Opening Day Improvements (including but not limited to the payment of debt service on bonds or notes issued to pay such costs) and for such other purposes as described in Section 2.2, Section 8, or as may otherwise be permitted by law.

2. Funding of Design Year Improvements

The parties anticipate that the following sources shall be available to pay the Design Year Improvements, if and when the same shall be required to be constructed by ODOT:

- 2.1 Tax Increment Financing from Tanger/Simon Outlet Site. Any additional revenues derived from the Tax Increment Financing described in Section 1.1 remaining after the payment of the Opening Day Improvements.
- 2.2. NCA Charge. The revenue derived from the Charge described in Section 1.3, to the extent such revenue is not needed to pay costs of the Opening Day Improvements. It is presently anticipated by the parties that this charge will be sufficient to finance the costs of the Design Year Improvements if such financing occurs after the full payment of the costs of the Opening Day Improvements.

The Authority covenants and agrees that it has the requisite power to levy and collect a charge sufficient to fund debt fully amortizing debt service on bonds that will fund up to \$16.5 million of costs attributable to the unfunded Design Year Improvements to the extent other revenues of the Authority and eligible and available to pay such costs are insufficient to pay the costs of such Design Year Improvements that are constructed or that shall be constructed by or at the direction of ODOT. Accordingly, the Authority shall guaranty, in favor of ODOT, the completion of the Design Year Improvements and shall provide or cause to be provided the monies necessary to pay for the Design Year Improvements, up to the total amount of \$16.5 million, upon sixty days' notice from ODOT, subject only to the prior appropriation of the Authority's Board of Trustees, provided that such guaranty shall be payable only from amounts derived from Service Payments or the Charge, and shall not be payable from amounts raised by taxation or derived by the Authority from any other source. The Authority's guaranty shall be reduced by an amount equal to the difference between (a) any amounts actually contributed to the payment of costs of the Design Year Improvements by third parties less (b) the total of the amounts required from all sources over and above \$16,500,000 to complete the Design Year Improvements. In the event any third party shall be obligated by the County or Township to contribute to costs of the Design Year Improvements but shall not fulfill its obligations, the Authority shall be subrogated to any rights of the County or Township to enforce such contribution, provided that the Authority shall fulfill the terms of its guaranty.

3. Funding of Other Improvements

If, after the funding of the Opening Day Improvements, it is determined by ODOT that certain Design Year Improvements are not to be completed (because they are no longer needed) additional revenue from the Charge (not to exceed \$16.5 million) and any additional revenue derived from the Tax Increment Financing described in Section 1.1, to the extent permitted by law, may be used to fund future improvements at the present interchange of US36/SR37 and I-71

PID90200 and related projects. After the full amount of the Charge attributable to the Public Improvements has been expended, the Charge may be applied in accordance with Chapter 349 of the Ohio Revised Code and the Authority's organizational and governing documents.

4. Developer Agreement to Purchase Bonds

The Developer agrees that, in the event that all or a portion of the Bonds to be issued by the Authority to fund payment of the Opening Day Improvements or Design Year Improvements cannot be sold by a public offering, limited public offering or privately placed, it shall purchase such bonds or notes of the Authority to the extent necessary to provide funds to pay costs of such improvements. The yield on such Bonds shall be no less than the yield received by any other buyer of such bonds or notes but shall not exceed that rate which is the lesser of (a) 175 basis points higher than the Bond Buyer Revenue Bond Index for instruments of like risk and like maturity on the date of their issuance or (b) the market rate that such obligations would bear if issued on the open market, as certified by the financial advisor to the Authority.

5. ODOT'S Rights

Pursuant to the ODOT Agreement, ODOT has the right to review and approve this Agreement. ODOT shall be deemed to be a third-party beneficiary of this Agreement. No provision of this Agreement shall be amended in a manner that adversely affects ODOT's interests without ODOT's written consent.

6. County Obligation to Cooperate

6.1 County agrees to cooperate with the Developer, to the extent feasible and consistent with existing laws and regulations, to provide necessary approvals as soon as may be reasonably practicable and to promptly consider the requests of the Developer in connection with the Tanger/Simon Outlets Development and the Public Improvements. In addition, County agrees to cooperate with the Developer to the extent necessary (including, but not limited to signing an exemption certificate) to ensure that the materials incorporated into Opening Day Improvements comprising public improvements are exempt from Ohio sales taxes.

6.2 The County will use reasonable efforts, to the extent not prohibited by then-existing law, to secure funding, including, but not limited to, tax increment finance revenues, assessments, community development charges and other credits and incentives, from other development projects in the vicinity of the Tanger/Simon Outlets Site to mitigate the traffic impacts of those other development projects.

7. Termination

In the event the Developer provides written notice to the County and of its intent not to proceed with the Tanger/Simon Outlet Mall the County may in its discretion, terminate or suspend the application of this Agreement pending the resolution of any issues. This Agreement shall not otherwise be terminable by the parties.

8. General Provisions

8.1 Entire Agreement. This Agreement constitutes the entire and integrated agreement between the parties insofar as it relates to the funding of the Public Improvements. Any change to the provisions of the Agreement shall be made by written amendment executed by all of the parties.

8.2 Notices. All notices to be given under this Agreement shall be in writing and mailed by certified mail to:

IF TO THE COUNTY:

Delaware County
101 N. Sandusky Street,
Delaware, Ohio 43015

Attention: Administrator

IF TO THE DEVELOPER:

Columbus Outlets, LLC
c/o Tanger Properties Limited Partnership
3200 Northline Avenue, Suite 360
Greensboro, NC 27408
Attention: Frank C. Marchisello, Jr.

With a copy to:
Columbus Outlets, LLC
c/o Simon Premium Outlets
60 Columbia Road
Building B-3rd Floor
Morristown, New Jersey 07960
Attention: Steven Dworkin, SVP
Email:sdworkin@simon.com

With a copy to:
Kristopher Wahlers
Ice Miller LLP
250 West Street, Suite 700

Columbus, Ohio 43215

IF TO THE TOWNSHIP:

Berkshire Township, Delaware County Ohio
1454 Rome Corners Road
Galena, Ohio 43021
Attention: Administrator

IF TO THE AUTHORITY:

Berkshire Landing New Community Authority
c/o Ice Miller LLP
250 West Street, Suite 700
Columbus, Ohio 43215
Attention: Kristopher Wahlers

IF TO ODOT:

Ohio Department of Transportation
400 E. William Street
Delaware, Ohio 43015
Attention: Ferzan M. Ahmed

- 8.3 Governing Law. This Agreement will be construed and interpreted and the rights of the parties determined under the laws of the State of Ohio. Any litigation arising out of or relating in any way to this Agreement or the performance thereunder shall be brought only in the courts of Ohio, and County and Developer hereby irrevocably consent to such jurisdiction.
- 8.4 Any person executing this Agreement in a representative capacity warrants that he or she has been duly authorized by his or her party to execute this Agreement on such party's behalf.
- 8.5 Enforceability. Each obligation of the County, Township, or Authority required to be undertaken pursuant to this Agreement is binding upon the County, Township, or Authority and upon each officer or employee thereof as may have from time to time the authority under law to take any action on behalf of the County, Township, or Authority which may be necessary to perform all or any part of that obligation, as a duty of the County, Township, or Authority and of each of those officers and employees resulting from an office, trust, or station within the meaning of Section 2731.01, Ohio Revised Code, providing for enforcement by writ of mandamus.

8.6 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which together shall constitute but one and the same instrument.

9. Payment to School District

9.1 So long as the property comprising the Tanger /Simon Outlets Site shall be subject to the exemption from real property taxes described in Section 1.1, the Authority shall periodically set aside amounts derived from the Charge equal in the aggregate to \$1,000,000 to be paid to the Big Walnut Local School District (the "School District") in installments in accordance with, payable at the times provided, and subject to the terms of the School Compensation Agreement, dated February 3, 2015. Such amounts, if and when paid to the School District, shall reduce the Developer's obligation under the Compensation Agreement, to the extent provided therein.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the last date written below.

Delaware County, Ohio

By: [Signature] Gary Merrell, Commissioner
Per Reso 11-137
and Reso 15-406
Date: 4-6-2015

Columbus Outlets, LLC
a Delaware limited liability company

By: **Tanger Columbus, LLC**
a North Carolina limited liability company
its Co-Managing Member

By: **Tanger Devco, LLC**
a North Carolina limited liability company
its Manager

By: _____

Name (printed): _____
Title: _____

By: **SPG Columbus Outlet Investments, LLC**
a Delaware limited liability company
its Co-Managing Member

By: _____
Name (printed): _____
Title: _____

Date: _____

Berkshire Landing New Community Authority

By: [Signature]

Date: 6/10/15

[SIGNATURE PAGE 2]

Township of Berkshire, Delaware County, Ohio

By: _____

See next page

Date _____

Reviewed and Approved by ODOT
As Third-Party Beneficiary

By: *Jerry Wray*
Jerry Wray, Director

Date: 4/15/15

[SIGNATURE PAGE 2]

Township of Berkshire, Delaware County, Ohio

By: Mark D. Pitt By: Richard Myers By: William H. Hall
Date: 4/16/15 Date: 4/16/15 Date: 4-17-15

Reviewed and Approved by ODOT
As Third-Party Beneficiary

By: _____

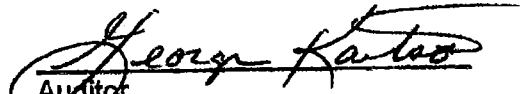
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Date: _____

FISCAL OFFICER'S CERTIFICATE-COUNTY

The undersigned Fiscal Officer of the County of Delaware Ohio, under the foregoing Agreement hereby certifies that the moneys required to meet the obligations of the County during the year 2015 under that Agreement have been lawfully appropriated by the Board of Commissioners for such purposes and are in the Treasury of the County or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Dated: April 6, 2015


Auditor
County of Delaware, Ohio

Contract # 2015-0104

FISCAL OFFICER'S CERTIFICATE - TOWNSHIP

The undersigned Fiscal Officer of Berkshire Township, Delaware County, Ohio, under the foregoing Agreement hereby certifies that the moneys required to meet the obligations of the Township during the year 2015 under that Agreement have been lawfully appropriated by the Board of Trustees for such purposes and are in the Treasury of the Township or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Dated: _____, 2015

Fiscal Officer
Berkshire Township,
Delaware County, Ohio

see next page

FISCAL OFFICER'S CERTIFICATE - AUTHORITY

The undersigned Fiscal Officer of Berkshire Landing New Community Authority, Delaware County, Ohio, under the foregoing Agreement hereby certifies that the moneys required to meet the obligations of the Authority during the year 2015 under that Agreement have been lawfully appropriated by the Board of Trustees for such purposes and are in the Treasury of the Authority or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Dated: April 22, 2015

Melody K. George

Fiscal Officer
Berkshire Landing New Community
Authority,
Delaware County, Ohio
FISCAL OFFICER
Berkshire Township

FISCAL OFFICER'S CERTIFICATE - AUTHORITY

The undersigned Fiscal Officer of Berkshire Landing New Community Authority, Delaware County, Ohio, under the foregoing Agreement hereby certifies that the moneys required to meet the obligations of the Authority during the year 2015 under that Agreement have been lawfully appropriated by the Board of Trustees for such purposes and are in the Treasury of the Authority or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

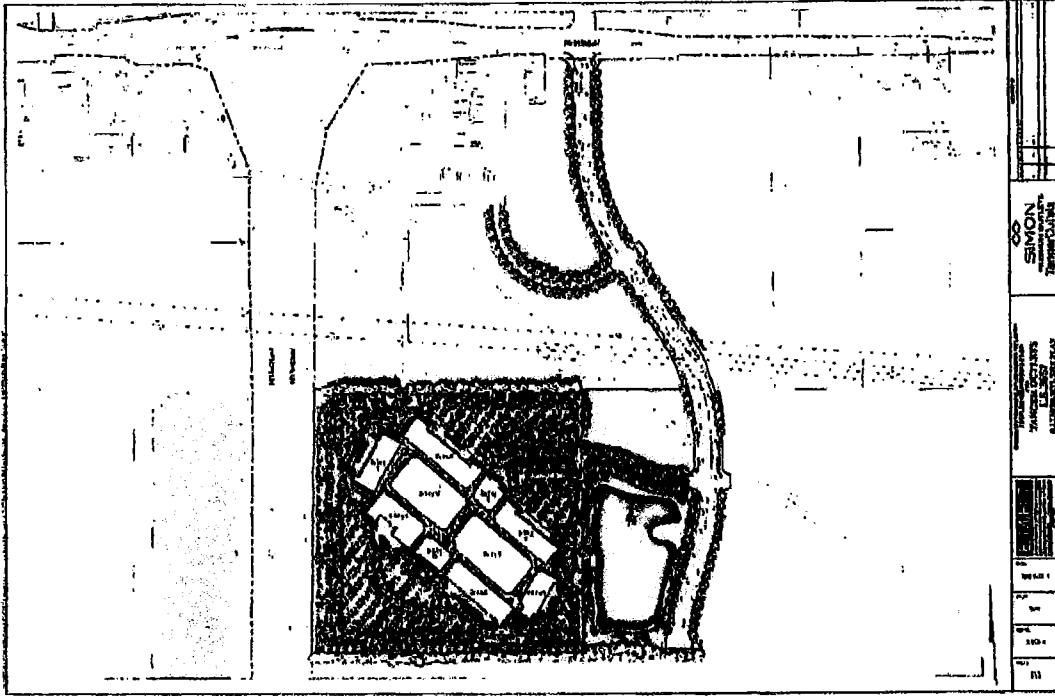
Dated: June 10, 2015



Fiscal Officer
Berkshire Landing New Community
Authority,
Delaware County, Ohio

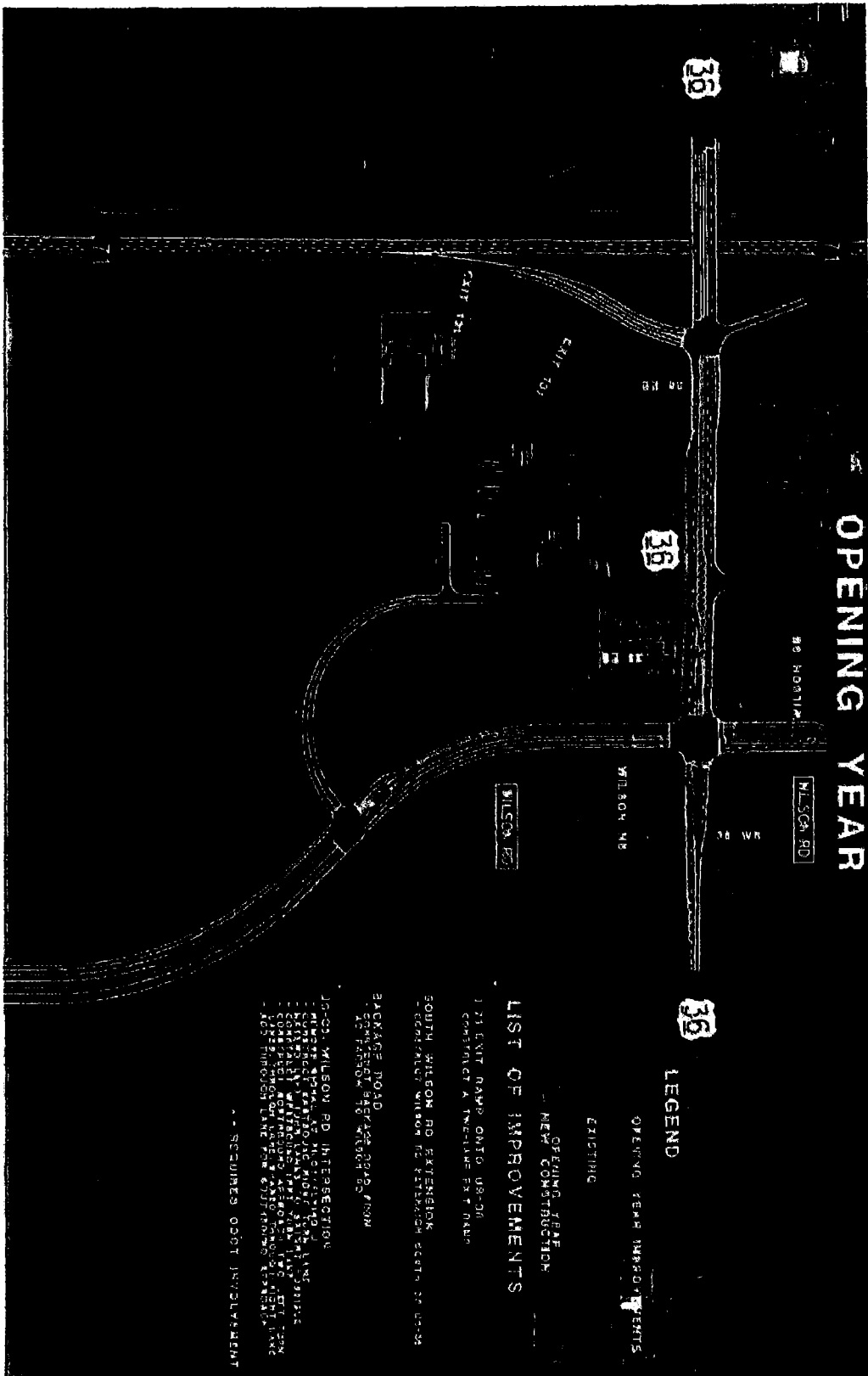
EXHIBIT A
TANGER SIMON OUTLETS DEVELOPMENT

EXHIBIT A
TANGER SIMON OUTLETS DEVELOPMENT



**EXHIBIT B
OPENING DAY IMPROVEMENTS**

OPENING YEAR



36

LEGEND

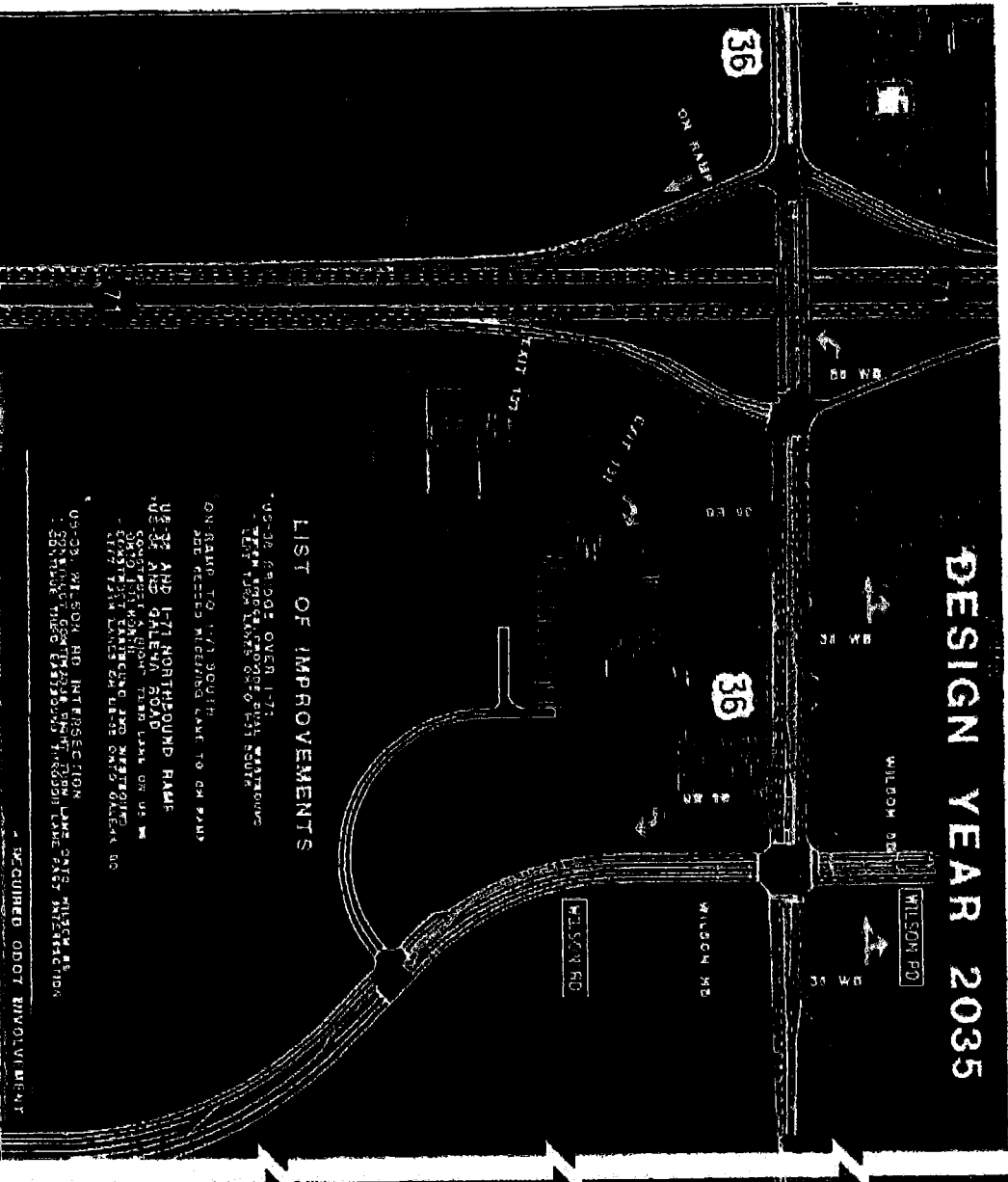
- OPENING YEAR IMPROVEMENTS
- EXISTING
- NEW CONSTRUCTION

LIST OF IMPROVEMENTS

- 1. NEW RAMP ONTO US-36
 - 2. CONSTRUCT A TWEIGLE FR. RAMP
 - 3. SOUTH WILSON RD EXTENSION
 - 4. RECONSTRUCT WILSON RD INTERSECTION WITH US-36
 - 5. BACKAGE ROAD
 - 6. CONSTRUCT BACKAGE ROAD FROM 101 TO WILSON RD
- 15-03: WILSON RD INTERSECTION
- IMPROVE SIGNAL AND MEDIAN AT 15-03
 - EXTEND SOUTH WILSON ROAD TO 3510 FT 3510 FT
 - CONSTRUCT WILSON RD FROM 15-03 TO 15-03
 - RECONSTRUCT WILSON RD INTERSECTION WITH US-36
 - ADD THROUGH LANE FROM EXISTING RAMP
- ** SECURED ODOT INVESTMENT

EXHIBIT C
DESIGN YEAR IMPROVEMENTS

DESIGN YEAR 2035



LIST OF IMPROVEMENTS

- US-36 69.001 OVER I-71 WITH SPECIAL PROPOSED FULL MAINTENANCE LEFT TURN LANE @ 69.011 SOUTH
 - ON-RAMP TO I-71 SOUTH AND RIBBIS RECEIVING LANE TO ON-RAMP
 - US-36 AND I-71 MORTHOLOUND RAMP
 - US-36 AND GALENA ROAD
 - CONSTRUCTION OF TURN LANE ON US-36
 - CONSTRUCTION OF TURN LANE ON US-36
 - CONSTRUCTION OF TURN LANE ON US-36
- ACQUIRED ODOT IMPROVEMENT

LEGEND

- DESIGN YEAR IMPROVEMENTS
- EXISTING
- OPENING YEAR IMPROVEMENTS
- DESIGN YEAR NEW CONSTRUCTION

