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GARY W. OTT  
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When recorded return to:

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68 South Main, 6<sup>th</sup> Floor  
Salt Lake City, Utah 84101

Sandy (E), UT (#5235-01)

**EASEMENTS WITH COVENANTS AND  
RESTRICTIONS AFFECTING LAND**

**THIS AGREEMENT** ("Agreement") is made as of the 7<sup>th</sup> day of DECEMBER 2005, between WAL-MART REAL ESTATE BUSINESS TRUST, a Delaware statutory trust, of 2001 S.E. 10th Street, Bentonville, Arkansas 72716-0550 ("Wal-Mart"), LOWE'S HIW, INC., a Washington corporation, of Highway 268 East, North Wilkesboro, North Carolina 28659 ("Lowe's"), BOYER PEBBLEBROOK, L.C., a Utah limited liability company, of 90 South 400 West, Suite 200, Salt Lake City, Utah 84101 ("Pebblebrook), and BOYER QUARRY BEND, L.C., a Utah limited liability company, of 90 South 400 West, Suite 200, Salt Lake City, Utah 84101 ("Quarry Bend"). Pebblebrook and Quarry Bend are collectively referred to herein as "Developer". Wal-Mart, Lowe's, and Developer may individually be referred to herein as a "Party" and collectively, as the "Parties").

**WITNESSETH:**

**WHEREAS**, Wal-Mart is the owner of those certain tracts of real property consisting of approximately 27.95 acres located in Salt Lake County, State of Utah, as more particularly described on Exhibit A attached hereto and made a part hereof for all purposes (the "Wal-Mart Tract"); and

**WHEREAS**, Lowe's is the owner of that certain tract of real property consisting of approximately 14.82 acres located in Salt Lake County, State of Utah, as more particularly described on Exhibit B attached hereto and made a part hereof for all purposes (the "Lowe's Tract"); and

**WHEREAS**, Pebblebrook and Quarry Bend are the owners of certain tracts of real property located in Salt Lake County, State of Utah, as more particularly described on Exhibit C attached hereto and made a part hereof for all purposes (individually the Pebblebrook Tract" and "Quarry Bend Tract" and collectively the "Developer Tract"); and

**WHEREAS**, the Wal-Mart Tract, the Lowe's Tract, and the commercial portion of the Developer Tract are schematically depicted on Exhibit D attached hereto and made a part hereof for all purposes; and

**WHEREAS**, Wal-Mart, Lowe's and Developer desire that the Wal-Mart Tract, the Lowe's Tract, and the Developer Tract be developed in conjunction with each other pursuant to a

general plan of improvement to form a commercial Shopping Center (sometimes hereinafter referred to as the "Shopping Center"), and further desire that said tracts be subject to the easements and the covenants, conditions and restrictions hereinafter set forth;

**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, Lowe's and Developer do hereby agree as follows:

1. Definitions. As used herein, the following terms shall have the definitions given them below:

1.1 "Alternate Use Area" – each of (a) that certain property adjacent to the Shopping Center and more particularly described on Exhibit E-1 attached hereto, which Developer Pebblebrook intends to develop for mixed single-family and multi-family residential use, and (b) that certain property designated on the Site Plan as "North Park" and more particularly described on Exhibit E-1 attached hereto.

1.2 "Building Areas" - that portion of the Wal-Mart Tract, that portion of the Lowe's Tract, and those portions of the Developer Tract shown on the Site Plan as "Building 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.

1.3 "City Alternate Use Area" – that certain property designated as such on the Site Plan and more particularly described on Exhibit E-2 attached hereto.

1.4 "Consenting Owners" – the Owner of the Lowe's Tract, the Owner of the Wal-Mart Tract, and the Owner of the Developer Tract. The Parties intend that there shall be only three (3) Consenting Owners for the Shopping Center consisting of only one Consenting Owner representing the Developer Tract, only one Consenting Owner representing the Lowe's Tract, and only one Consenting Owner representing the Wal-Mart Tract. The Consenting Owner for the Developer Tract shall be Quarry Bend. In the event that the Lowe's Tract, the Wal-Mart Tract, or the Developer Tract should be further subdivided, the current Consenting Owner of such Tract shall designate the particular Parcel of the subdivided Tract whose Owner shall succeed as the Consenting Owner.

1.5 "Common Areas" - all of the Wal-Mart Tract, the Lowe's Tract, and the Developer Tract except the Building Areas. Common Areas do not include drive up or drive through areas and facilities, loading docks, patio areas, or permanent outdoor sales areas.

1.6 "Common Maintenance Areas" – those areas designated as such on the Site Plan, comprising certain landscaped areas, entrances and drive aisles, and the storm water system, including a detention basin, serving the Shopping Center. The Common Maintenance Areas shall not include the drive designated on the Site Plan as "Service Drive B" or any roadways dedicated to Sandy City after the date on which Sandy City accepts such dedication.

1.7 "Maximum Square Footage" - the maximum square footage allowed for all Buildings contained within a single Building Area on the Developer Tract. The Maximum Square Footage for each such Building Area is shown on the Site Plan. Any change to the Maximum Square Footage for a Building Area on the Developer Tract shall require the consent of the Consenting Owners for the Lowe's Tract and the Wal-Mart Tract.

1.8 "No Change Area" - the area designated as such on the Site Plan. All access drives and entrances and all drive aisles that adjoin the Lowe's Tract and/or the Wal-Mart Tract shall be included in the No Change Area; if such items are not shown on the Site Plan but are later added to the Shopping Center, they shall be included in the No Change Area.

1.9 "Owner" - the owner in fee simple of any portion of the Shopping Center; provided, however, that so long as Wal-Mart or Lowe's occupies its Tract (whether as the owner, pursuant to a lease agreement, or otherwise) Wal-Mart or Lowe's, as applicable, shall be the "Owner" of its Tract for purposes of this Agreement.

1.10 "Parcel" - the lots and parcels within the Shopping Center as shown on the Site Plan. "Outparcel" shall mean the areas within the Shopping Center labeled on the Site Plan as Developer Tracts A through F.

1.11 "Retail Offices" - offices of the type customarily found in retail shopping centers for use primarily with customers or clients including, without limitation, insurance offices, real estate offices, banks and financial institutions, and travel agents, but shall not include education or training facilities or, except as otherwise expressly provided in Section 2.2(h) below, medical or dental offices.

1.12 "Site Plan" - the site plan attached hereto as Exhibit D.

1.13 "Tract" - the Lowe's Tract, the Wal-Mart Tract and/or the Developer Tract.

1.14 Conversion to 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 Agreement, 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.

1.15 Addition of Alternate Use Areas. This Agreement shall not restrict either Alternate Use Area so long as such Alternate Use Area is used for residential or park purposes and so long as there is no cross-access between the Shopping Center and such Alternate Use Area; provided that a public street between the Shopping Center and an Alternate Use Area shall not be deemed to constitute cross-access for purposes of this provision. Upon any change in use from residential or park purposes of an Alternate Use Area or the granting of any cross-access to an Alternate Use Area over any part of the Shopping Center, such Alternate Use Area shall become part of the Shopping Center and subject to the covenants, easements, and restrictions of this Agreement for all purposes, and the Parties shall record an amendment to this Agreement (a) providing notice that the Alternate Use Area is subject to this Agreement; (b) adding the Alternate

Use Area to the Site Plan; and (c) making such Alternate Use Area a part of the Developer Tract for all purposes including but not limited to Sections 4.1 and 4.2 of this Agreement.

1.16 City Alternate Use Area. Without the prior written consent of the Owner of the Lowe's Tract, the City Alternate Use Area shall not be used for any purpose except as a public park or to provide access to the amphitheatre owned by Sandy City and located adjacent to the City Alternate Use Area.

2. Use.

2.1 Subject to Sections 2.2, 2.3, and 4 below, the 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, Retail Offices and retail stores (including clothing stores, discount stores, grocery stores, and hardware and home improvement stores and any combination thereof) and restaurants with less than forty percent (40%) of gross revenues from alcoholic beverage sales.

2.2 The following uses are specifically prohibited within the Shopping Center without the prior written consent of each of the Consenting Owners, which each may withhold in its sole discretion

(a) Any bar, tavern, pub, discotheque, dance hall, ballroom, nightclub or any other establishment selling alcoholic beverages for on-premises consumption; provided that the foregoing shall not prohibit the operation of a restaurant, micro-brewery or brew pub where the sale of alcoholic beverages therein comprises less than forty percent (40%) of the restaurant's gross revenues;

(b) Any bowling alley, arcade, amusement gallery, pool room, billiard parlor, theater, cinema, video game room (except video or other games incidental to a business otherwise permitted hereunder);

(c) A health club, gymnasium or spa, on Outparcel C, Outparcel D, Outparcel E, and Outparcel F, except the same may be permitted outside such tracts.

(d) A service station, automotive repair shop or truck stop; provided, however, in no event shall this Section 2.2(d) be deemed to prohibit the operation of a tire and lube express or a gasoline dispensing operation (or any similar type uses) on the Wal-Mart Tract, and provided further that a convenience store which sells gasoline or a free standing fuel station may be located on the Developer Tract outside Outparcel C, Outparcel D, and Outparcel F.

(e) A flea market or pawn shop.

(f) A training or educational facility (including, without limitation, a school, college, reading room or other facility catering primarily to students and trainees rather than

customers; provided that such restriction shall not prohibit training or classes, such as "how to" classes taught in conjunction with the sale of retail items from an otherwise permitted retail use.

(g) A car wash, except that (i) a car wash may be located on Outparcels A or B; and (ii) one (1) single-car "tunnel" car wash may be operated on Outparcel E or on Outparcel F provided that such car wash shall have constructed and shall use lateral sanitary sewer, water and storm water drainage lines, running from such car wash to the main lines, entirely separate from those utilized by the Lowe's Tract.

(h) A medical office or clinic, except that dental offices, physical therapist offices and chiropractic offices may be located in Outparcels A, B, and F.

(i) Any operation primarily used as a storage or mini-warehouse operation.

(j) A dry cleaning plant, central laundry or laundromat.

(k) An establishment for the sale of automobiles, trucks, mobile homes, recreational motor vehicles (provided that such restriction shall not prohibit the lease of vehicles or equipment from the Lowe's Tract).

(l) A child day care facility.

(m) A hotel or motel.

(n) Governmental offices.

2.3 The following uses are unconditionally prohibited within the Shopping Center.

(a) Any adult bookstore and/or any establishment selling, renting or exhibiting materials containing sexually explicit matter (including, without limitation: magazines, books, movies, videos, photographs or so called "sexual toys") or providing adult type entertainment or activities (including, without limitation, any displays of a variety involving, exhibiting or depicting sexual themes, nudity or lewd acts).

(b) A massage parlor;

(c) A skating rink;

(d) Any mortuary, crematorium or funeral home;

(e) Any mobile home park or trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers

during periods of construction, reconstruction, or maintenance); provided, however, that the foregoing restriction shall not be construed so as to prohibit Wal-Mart from allowing customers of Wal-Mart to park recreational vehicles overnight in that portion of the parking field on the Wal-Mart Tract designated on the Site Plan as "Overnight Parking Area";

(f) Any land fill, garbage dump, dumping, depositing, incineration, or reduction of garbage (exclusive of garbage compactors located in the rear of any building);

(g) A telephone call center;

(h) Any bingo hall or other gambling establishment;

(i) Any veterinary hospital or animal raising facility (except that this prohibition shall not prohibit (1) the sale of pets as an ancillary component of the retail operation undertaken on the Wal-Mart Tract or the Lowe's Tract, or (2) pet shops or a veterinary hospital as a part of a national chain retail pet store or national chain pet supply store); and

(j) Assembling, manufacturing, industrial, distilling, refining, or smelting facility or agricultural or mining operation.

Each of Developer, Lowe's, and Wal-Mart recognizes that the businesses prohibited herein may inconvenience their respective customers and adversely affect their respective businesses.

### 3. No Covenant to Operate.

3.1 As to Wal-Mart. Notwithstanding anything to the contrary contained herein, it is expressly agreed that nothing contained in this Agreement 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 by Wal-Mart on the Wal-Mart Tract. Developer recognizes and agrees that Wal-Mart may, at Wal-Mart's sole discretion and at any time during the term of this Agreement, cease the operation of its business on the Wal-Mart Tract, and Developer hereby waives any legal action for damages or for equitable relief which might be available to Developer because of such cessation of business activity by Wal-Mart. Nothing herein shall be deemed as a waiver of any rights Developer may have pursuant to any other agreement between Wal-Mart and Developer.

3.2 As to Lowe's. Lowe's is not obligated to continuously operate a business on the Lowe's Tract and is not obligated to continuously operate or operate for any specific period of time a Lowe's Home Center store or any other business on the Lowe's Tract. Nothing contained in this Agreement shall be construed, interpreted or otherwise read to require Lowe's to operate a business on the Lowe's Tract or to prevent Lowe's from closing its business on the Lowe's Tract.

4. Competing Business.

4.1 Covenant for the Benefit of the Wal-Mart Tract. Developer covenants that as long as Wal-Mart or any affiliate of Wal-Mart is the user of the Wal-Mart Tract, either as owner or lessee, no space in or portion of the Developer Tract, and no space in or portion of any other real property adjacent to the Shopping Center which may subsequently be acquired by Developer, shall be leased or occupied by or conveyed to any other party for use as a membership warehouse club, a discount department store or other discount store, a pharmacy, a grocery store, or any combination of the foregoing uses. Notwithstanding anything contained in this Agreement to the contrary, nothing in this Section 4 shall prohibit the operation of a "category retailer" (as such term is commonly known in the industry including, but not limited to, an apparel store, a shoe store, a book store, a pet supply store, a cosmetics store, and a discount clothing and soft goods store not carrying other general goods merchandise but excluding any membership warehouse store or grocery store) on the Developer Tract. In the event of a breach of this covenant, Wal-Mart shall have the right to terminate this Agreement and to seek any and all remedies afforded by either law or equity. The restrictions set forth in this Section 4.1 shall not apply to the Lowe's Tract.

4.2 Covenant for the Benefit of the Lowe's Tract.

(a) No portion of the Developer Tract (and any property adjoining the Shopping Center and acquired by Developer) shall be used as a building material supplies or home center or home improvement retail warehouse as such businesses are commonly understood in the shopping center business or for any of the following uses:

(i) A hardware store or center containing more than five thousand (5,000) square feet of useable floor area.

(ii) An appliance or lighting store or center containing more than five thousand (5,000) square feet of useable floor area.

(iii) A nursery and/or lawn and garden store or center containing more than three thousand (3,000) square feet of useable floor area.

(iv) A paint, wall paper, tile, flooring, carpeting and/or home décor store or center containing more than five thousand (5,000) square feet of useable floor area.

(v) A retail and/or warehouse home improvement center, lumber yard, building materials supply center, home improvement service center and/or other stores or centers similar to those operated by or as Lowe's, Home Depot, Home Depot Expo, Villagers Hardware, 84 Lumber, Wickes, Hughes Lumber, McCoys, Menard's, Sears Hardware, Great Indoors, Sutherlands, Scotty's and Orchard Supply.

(b) The foregoing restrictions or exclusive rights shall also apply to prohibit a larger business having space in its store devoted to selling the merchandise described in

Subparagraphs (a)(i) through (a)(v) when such space exceeds the limitations of Subparagraphs (a)(i) through (a)(v).

(c) Notwithstanding anything in the foregoing to the contrary, in the event a retail and/or warehouse home improvement center, lumber yard, building materials supply center, hardware store, lawn and garden store, appliance, lighting store, and/or paint and/or décor center is not operated in any portion of the Lowe's Tract for a period in excess of two (2) consecutive years (excluding temporary closings due to alterations, casualty, condemnation, or other unavoidable delays beyond the reasonable control of the Owner of the Lowe's Tract), the above stated exclusives shall be of no further force and/or effect until such time as Lowe's or its successors, assigns or tenants shall re-open a store on any portion of the Lowe's Tract for any one of the foregoing uses, which reopening shall not prohibit uses in violation of such exclusives if a binding purchase agreement or lease for such use was executed during such time as the above exclusive use restrictions were of no force and/or effect.

(d) The restrictions set forth in the foregoing subsections (a) and (b) shall not apply to the Wal-Mart Tract.

(e) Any Owner, occupant or person owning, leasing or otherwise making use of any portion of the Shopping Center shall be deemed, by virtue of accepting such ownership, leasehold interest or making such use, to have covenanted and agreed that (i) the trade names, trademarks, service marks (including, without limitation, all logos, emblems, designs or designating words or names) utilized by Lowe's Home Centers, Inc. or its affiliated companies ("Lowe's") or by Wal-Mart Stores, Inc. or its affiliates ("Wal-Mart Stores"), in connection with the Shopping Center or the conduct of its business thereat are registered and/or the proprietary property of Lowe's or Wal-Mart Stores, as applicable, (ii) except as provided below, no usage of those marks or names will be made in naming or referring to any activity within or without the Shopping Center and (iii) no usage of such marks or names shall be made without the prior written consent of Lowe's or Wal-Mart Stores, as applicable, which consent each may withhold in its sole discretion. Lowe's reserves the right to require any person or entity to whom it may grant a written right to use a given name or mark to enter into a formal written license agreement with Lowe's and to charge a fee or royalty therefor.

## 5. Buildings.

5.1 Design and Construction. All buildings constructed in the Shopping Center 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 5.4 below. The design and construction shall be of high quality. The Consenting Owners shall cooperate in creating a reasonably harmonious exterior appearance for the buildings and improvements to be constructed by them within the Shopping Center, acknowledging however that each of the Owners of the Lowe's Tract and the Wal-Mart Tract may construct improvements similar to its current prototypical store building and improvements, subject, however, to all necessary governmental approvals. Specifically, the initial design and appearance of the buildings and improvements on the Lowe's Tract and the Wal-Mart



Tract and any changes to the buildings and improvements on the Lowe's Tract or the Wal-Mart Tract that the Owner of such Tract may deem appropriate for consistency with changes in the design and appearance of its then current prototypical stores do not require the consent of any other Owner. No building on the Lowe's Tract or the Wal-Mart Tract shall exceed fifty (50) feet in height (including architectural elements) above finished grade, and buildings on Developer Tract shall be subject to the height restrictions set forth in Section 5.5 below. No building shall have a predominantly metal exterior.

5.2 Location. No building shall be constructed on the Wal-Mart Tract, the Lowe's Tract, and the Developer Tract (as either immediate development or future expansion) except within the Building Areas. No changes shall be made to the Building Areas without the prior written consent of each of the Consenting Owners.

5.3 Fire Protection. Any building constructed in the Shopping Center shall be constructed and operated in such a manner which will preserve the sprinklered rate on the other buildings in the Shopping Center. No building may be constructed within sixty (60) feet of the Building Area on the Lowe's Tract or the Building Area on the Wal-Mart Tract.

5.4 Easements. In the event building wall footings encroach from one tract onto another, despite efforts to avoid that occurrence, the Owner onto whose tract the footings encroach shall cooperate in granting an encroachment permit or easement to the party whose building wall footings encroach.

5.5 Developer Tract Development. The Developer Tract shall be developed only under the following guidelines:

(a) Any building constructed on the Developer Tract shall not exceed twenty-four (24) feet in height, as measured from the finished elevation of the parking area of the Shopping Center, with architectural features not to exceed twenty-eight (28) feet in height and with a width not greater than twenty percent (20%) of the width of the fascia of the building.

(b) Any rooftop equipment on the Developer Tract shall be screened in a manner satisfactory to the Consenting Owners.

(c) No rooftop sign shall be erected on any building constructed on the Developer Tract.

(d) Freestanding monument signs may be erected on the Developer Tract in the locations shown on the Site Plan, with the approval of Developer. Such freestanding monument signs shall not exceed eight (8) feet in height above grade (including the height of any berming) and shall not materially interfere with the visibility of the building on the Wal-Mart Tract or the building on the Lowe's Tract. In addition, there may be erected entrance-exit signs to facilitate the free flow of traffic, which entrance-exit signs shall conform to the Sign Plan.

(e) No building or structure of any kind shall be erected on the Developer Tract except upon that area designated as 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.

(f) In developing and using the Developer Tract, the Owner of the Developer Tract shall continuously provide and maintain a parking ratio on the Developer Tract equal to one of the following: (i) seven (7) spaces for every one thousand (1,000) square feet of building space for any fast food or quick service restaurant use, (ii) seven (7) spaces for every one thousand (1,000) square feet of building space for any health club or gymnasium use; (iii) ten (10) spaces for full-service, sit-down restaurant use or entertainment use; and (iv) four and one-half (4.5) spaces per one thousand (1,000) square feet of building space for any other use. Outparcels A and B, taken together, Outparcels C and D, taken together, and each of Outparcels E and F shall be self-supporting with respect to parking, so that parking spaces available on other portions of the Shopping Center cannot be counted in meeting the requirements of this Section. In addition, Developer shall cause landscaping areas to be added and maintained in conjunction with any building or other improvement constructed on the Developer Tract.

(g) The Developer Tract shall be kept neat, orderly, dust-controlled, weed-free and trimmed until improved and constructed. Thereafter, the Developer Tract shall be maintained in accordance with the standards set forth in Section 7.2(a) below.

5.6 No-Build Areas. No buildings shall be constructed on the areas designated on the Site Plan as "Open Space Area 1" and "Open Space Area 2"; provided, however, that retaining walls may be constructed on such areas.

## 6. Common Areas.

6.1 Grant of Easements. Each Party, as grantor, hereby grants to the other Party, as grantee, and to the agents, customers, invitees, licensees, tenants and employees of grantee, a nonexclusive easement over, through and around their respective tracts within the Shopping Center for roadways, walkways, ingress and egress, vehicle parking, loading and unloading of commercial and other vehicles, and the use of facilities installed for the comfort and convenience of customers, invitees, licensees, tenants and employees of all businesses and occupants of the buildings constructed on the Building Areas defined above; provided, however, in no event shall the Owner, occupant, licensee or invitee of any portion of the Developer Tract be permitted to use the Wal-Mart Tract or the Lowe's Tract for any purpose other than vehicular and pedestrian access, ingress and egress and parking.

6.2 Limitations on Use.

(a) Customers. Each Owner 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 the Wal-Mart Tract, the Lowe's Tract, and the Developer Tract.

(b) Employees. Each Owner shall use reasonable efforts to ensure that employees of the occupant(s) on such Owner's Parcel shall not park on the Common Areas, except in areas on such Owner's Parcel designated on the Site Plan as "employee parking areas," if any. The Consenting Owners hereto may from time to time mutually designate and approve "employee parking areas" not shown on the Site Plan.

(c) General. Any activity within the Common Areas other than the primary purpose of the Common Areas, which is to provide for parking for the customers, invitees and employees of those businesses conducted with the Building Areas and for the servicing and supplying of such businesses, shall be permitted so long as such activity shall not unreasonably interfere with such primary purpose. Notwithstanding the foregoing, subject to local ordinances, each of the Owners of the Lowe's Tract and the Wal-Mart Tract may conduct sidewalk sales, parking lot sales, install a maintain a bank teller machine or kiosk, conduct other business, and/or display merchandise in that portion of the Common Area (including the parking field) in the area designated on the Site Plan as "Outdoor Sales Area" on such Owner's Tract. The Owner of the Lowe's Tract may park vehicles or equipment in the parking field of the Lowe's Tract in connection with the leasing of vehicles and/or equipment. Persons using the Common Areas in accordance with this Agreement shall not be charged any fee for such use.

6.3 Utility and Service Easements.

(a) Each Owner hereby grants to the other Owner(s) perpetual easements to its (grantor's) Parcel, except within the grantor's Building Area, for the installation, use, operation, maintenance, repair, replacement, relocation, and removal of utility facilities serving the Parcel of the grantee.

(b) All utility facilities (except storm water retention ponds) installed in the Common Areas shall be underground, if reasonably possible, and their location shall be subject to the prior written consent of the Owner across whose Parcel the same are to be located, which consent shall not be unreasonably withheld, conditioned or delayed.

(c) Any such installation, maintenance, repair, replacement, relocation and removal of utility facilities shall be performed by the grantee of such easement at the grantee's expense only after thirty (30) days advance notice to the grantor of the grantee's intention to do such work. However, in the case of an emergency (whereby either persons or property are in immediate danger of substantial damage and/or harm), any such work may be immediately performed after giving such advance notice to the grantor as is practicable and reasonable under the circumstances. In addition, all such installation, maintenance, repair and removal shall be

performed in a manner that causes as little disturbance to the grantor as may be practicable under the circumstances and any and all portions of the surface area of the grantor's property which may have been excavated, damaged or otherwise disturbed as a result of such work shall be restored, at the sole cost and expense of the grantee, to essentially the same condition as existed prior to the commencement of any such work. No such work or restoration, except emergency repair work, shall be carried on during the period from November 15<sup>th</sup> through the next succeeding January 15<sup>th</sup>, and May 1<sup>st</sup> through July 1<sup>st</sup>, or on any weekends.

(d) The grantee of such easement shall defend, indemnify and hold the grantor harmless from and against any and all liens, losses, liabilities, costs or expenses (including reasonable attorney's fees and reasonable attorney's fees on appeal), incurred in connection with the grantee's use of the utility facilities easements granted hereunder, except to the extent occasioned by the grantor's negligent or wrongful act or omission to act.

(e) The grantor of any easement for utility facilities hereunder may use the utility facilities installed pursuant to such easement; provided, however, that any increase in costs incurred in order to make such utility facilities adequate to serve the grantor's additional use shall be borne by such grantor; and provided, further, that such grantor gives written notice to the grantee.

(f) Except during the period from November 15<sup>th</sup> through the following January 15<sup>th</sup> and the period from May 1<sup>st</sup> through July 1<sup>st</sup>, the grantor of any easement under this Section 6.3 may relocate on its Parcel any utility facilities installed thereon under any easement granted by it; provided, however, that such relocation:

(i) may be performed only after the grantor has given the grantee thirty (30) days' written notice of its intention to relocate such facilities;

(ii) shall not interfere with or diminish the utility services to the grantee (however, temporary interferences with and diminutions in utility services shall be permitted if they occur during the non-business hours of the grantee, and the grantee has been so notified under subparagraph (i) above. The grantor shall promptly reimburse the grantee for all costs, expenses and losses incurred by the grantee as a result of such interferences or diminutions, or both;

(iii) shall not reduce or unreasonably impair the usefulness or function of the facilities in question;

(iv) shall be located underground, if reasonably possible;

(v) shall be performed without cost or expense to the grantee, and, if utility facilities which provide service to the grantee are involved, in accordance with plans approved by the grantee.

6.4 Water Flow. Any alteration in the natural water flow which may occur as a natural consequence of normal construction activities and the existence of improvements substantially as shown on the Site Plan (including without limitation building and building expansion, curbs, drives and paving) shall be permitted.

6.5 Construction Easement.

(a) Each Party hereby grants to the other Parties temporary construction related easements in the Common Area of its (grantor's) Tract, and where appropriate and necessary in the Building Area on its (grantor's) Tract, but only prior to the commencement of construction by grantor of improvements on its own (grantor's) Tract, for the purpose of facilitating the initial construction of improvements by grantee as contemplated within this Agreement.

(b) With respect to any Parcels on which fresh dirt is dumped, the area shall be sloped to meet any contiguous property within the Shopping Center or any public roads, and shall be smoothed in a level manner consistent with the contours of the adjoining property or in accordance with a grading plan approved by the grantor, which approval shall not be unreasonably withheld, conditioned or delayed.

(c) The location and use of all temporary construction easements under this Section shall be subject to the prior written consent of the grantor, which consent shall not be unreasonably withheld, conditioned or delayed.

(d) Each grantee agrees to pay the grantor any additional cost of construction, maintenance, repair and replacement of any improvement or structure constructed by the grantor which may arise on account of or due to the grantee's exercise of its temporary construction easement rights under this Section. Each grantee further agrees to use due care in the exercise of the rights granted under this Section and, in the event the exercise of the rights granted under this Section requires the grantee to enter upon the Tract of the grantor, to first obtain the consent of the grantor as to the specific activities, methods and timing in the exercise of such rights so as to avoid cost or damage to the grantor.

(e) Each Party covenants and agrees, respectively, that its exercise of such easements shall not result in damage or injury to the building(s) or other improvements of any other Party, and shall not interfere with or interrupt the business operations conducted by any other occupant in the Shopping Center. Furthermore, once the final topcoat of asphalt or concrete paving has been placed on the Lowe's Tract or any Common Area access, egress and service drives to the Lowe's Tract, all construction traffic to or from the Developer Tract and the Wal-Mart Tract will be restricted to use of the "Common Entrances" and Main Drive" as shown on the Site Plan. Once the final topcoat of asphalt or concrete paving has been placed on the Developer Tract and the Wal-Mart Tract or any Common Area access, egress and service drives to the Developer Tract or the Wal-Mart Tract, all construction traffic to or from the Lowe's Tract will be restricted to use of the Common Entrances and Main Drive as shown on the Site Plan. In addition, each grantee, at its sole cost and expense, shall promptly repair, replace or restore any and all improvements of the grantor which have been damaged or destroyed in the exercise by the grantee of the temporary construction

easements granted under this Section and shall defend, indemnify and hold the grantor harmless from and against all liens, losses, liabilities, costs or expenses (including reasonable attorneys' fees and reasonable attorneys' fees on appeal) incurred in connection with or arising out of the grantee's exercise of said temporary construction easements, except to the extent occasioned by the grantor's grossly negligent or wrongful acts or omissions.

(f) A grantee's improvements made within such temporary construction easements shall, for purposes of cost allocation due to maintenance, operation, insurance, taxes, repairs, reconstruction and restoration under this Agreement, be deemed to be part of the grantee's Tract and building and shall be deemed not to be part of the grantor's Tract or building for such purposes.

(g) Except as reasonably necessary for and during the construction of any building, no structure of a temporary character shall be erected or allowed to remain on any Tract.

## 7. Development, Maintenance, and Taxes.

### 7.1 Development.

(a) Arrangement. The Common Areas within the No Change Area and the Lowe's Control Area shall initially be developed as shown on the Site Plan. No changes shall be made to the arrangement of the Common Area within the No Change Area without the prior written consent of the Consenting Owners for the Wal-Mart Tract and the Lowe's Tract, which each may withhold in its sole discretion. No changes shall be made to the arrangement of the Common Areas within the Lowe's Control Area without the prior written consent of the Consenting Owner for the Lowe's Tract, which consent shall not be unreasonably withheld, conditioned or delayed; provided that it shall not be unreasonable for such Consenting Owner to withhold consent to any change which: (i) alters or adversely impacts vehicular or pedestrian flow to the Lowe's Tract, (ii) alters the location of any sign on which such Consenting Owner is entitled to display a sign panel, or (iii) reduces the number of parking spaces available in any Parcel included within the Lowe's Control Area below the minimums set forth in this Agreement. There shall be no drive-through windows or lanes of traffic installed in the Lowe's Control Area, unless shown on the Site Plan, without the prior written consent of the Consenting Owner for the Lowe's Tract, which it may withhold in its sole discretion.

(b) "Parking Area" Ratio. The Developer Tract shall comply with the requirements of Section 5.5(f) above. Wal-Mart agrees that at all times there shall be independently maintained on the Wal-Mart Tract parking area sufficient to accommodate not fewer than four and one-half (4.5) car spaces for each one thousand (1,000) square feet of building or buildings on the Wal-Mart Tract exclusive of any portion of the Building Area on the Wal-Mart Tract occupied by a garden center. Lowe's agrees that at all times there shall be independently maintained on the Lowe's Tract parking area sufficient to accommodate not fewer than four and one-half (4.5) car spaces for each one thousand (1,000) square feet of building or buildings on the Lowe's Tract exclusive of any portion of the Building Area on the Lowe's Tract occupied by a garden center.

7.2 Maintenance.

(a) Standards for Common Areas. Following completion of the improvements on the Common Areas, the Owners shall maintain the Common Areas, or cause them to be maintained, in good condition and repair. The maintenance is to include, without limitation, the following:

(i) 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 (provided that the surface shall not be substantially repaved more often than once every seven (7) years);

(ii) 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;

(iii) Placing, keeping in repair and replacing any necessary appropriate directional signs, markers and lines;

(iv) Operating, keeping in repair and replacing, where necessary, such artificial lighting facilities as shall be reasonably required;

(v) Maintaining all perimeter and exterior building walls including but not limited to all retaining walls in a good condition and state of repair; and

(vi) Maintaining, mowing, weeding, trimming and watering all landscaped areas and making such replacements of shrubs and other landscaping as is necessary.

(b) Responsibility. Responsibility for maintenance of the Common Areas and the Common Maintenance Areas shall be vested in a Maintenance Director. Developer is hereby appointed as the initial Maintenance Director. The Maintenance Director shall maintain the Common Areas and the Common Maintenance Areas to the standards set forth in this Article 7 and shall be entitled to reimbursement for certain costs incurred in connection with such maintenance as set forth in Section 7.2(c) below; provided, however, that if the Maintenance Director shall fail to maintain the Common Areas as required by this Article 7 or shall otherwise breach its obligations with respect to Common Area maintenance and shall fail to cure such deficiency within 30 days after written notice to the Maintenance Director by any Consenting Owner of such deficiency with regard to such Consenting Owner's Tract, then such Consenting Owner may elect to self-maintain the Common Areas on its Tract (excluding any Common Maintenance Areas, which shall continue to be maintained by the Maintenance Director), whereupon such Consenting Owner shall become responsible for such maintenance solely with respect to its Tract and such Consenting Owner shall be responsible for the costs of the maintenance of its Tract but shall no longer be obligated to contribute to the maintenance of the remainder of the Common Areas as otherwise required by Paragraph 7.2(c) below (except for costs of maintenance of the drive aisle designated on the Site

Plan as the "Main Drive" and the Common Maintenance Areas). The Maintenance Director shall utilize a bid process to obtain any services or expenses subject to reimbursement pursuant to Paragraph 7.2(c) below and shall not contract with any person or entity related to or affiliated with the Maintenance Director or any owners, investors or principals of the Maintenance Director unless the costs of doing so are equal to or less than the lowest cost available by a responsible and qualified bidder under the bid process, evidence of which shall be provided to the Consenting Owners. Notwithstanding the foregoing, maintenance responsibility for exterior building walls of the individual buildings within the Shopping Center shall be the responsibility of the respective owners of the buildings. Any alterations on the Common Areas which are considered capital improvements or replacements shall not be assessed against the Wal-Mart Tract or against the Lowe's Tract.

(c) Payment and Calculation of Pro Rata Shares of Costs.

(i) The Maintenance Director shall expend only such funds as are reasonably necessary for the operation and maintenance of the Common Areas in accordance with the standards set forth in Section 7.2.(a) and shall promptly pay such costs ("CAM Costs") when incurred. For the purpose of this Agreement, CAM Costs shall not include costs and expenses which are not reasonably necessary for the operation and maintenance of the Common Areas. Exclusions from CAM Costs include but are not limited to the following:

- (A) Any late charges or fees;
- (B) any costs to clean or repair the Common Areas resulting from promotional activities or from construction, maintenance or replacement of buildings;
- (C) real property taxes and assessments;
- (D) profit, administrative and overhead costs (such as rent, legal, supplies, utilities and wages or salaries paid to management or supervisory personnel), provided however, a management fee in an amount not to exceed ten percent (10%) of annual CAM Costs (not including any tax or insurance costs) may be included as a CAM Cost;
- (E) entertainment, transportation, meals and lodging of anyone, and plaques, trophies and gift certificates;
- (F) depreciation and amortization except to the extent of actual cost savings realized as a result of the asset in question;
- (G) costs incurred by the Maintenance Director for alterations which are considered capital improvements;



(H) expenses in connection with services or other benefits which are offered to one or more occupants of the Shopping Center and who are charged directly for such services or other benefits;

(I) interest, points and fees on debt or amortization on any mortgage or mortgages encumbering the Shopping Center;

(J) all items and services for which an occupant in the Shopping Center reimburses the Maintenance Director or which the Maintenance Director provides selectively to one or more occupants without reimbursement;

(K) electrical power costs for which any occupant directly contracts with the local public service company;

(L) all expenses associated with maintenance, repair, replacement, operation and upkeep of portions of the Shopping Center under roof;

(M) the cost of acquisition of new land or construction of new buildings;

(N) costs exceeding those obtainable through competitive bidding by responsible and qualified bidders; and

(O) earthquake and/or flood insurance, unless such coverage is available at commercially reasonable rates.

(ii) The annual budget for CAM Costs shall be provided to each Consenting Owner by the Maintenance Director annually in advance for such Consenting Owner's approval. Each Owner shall pay the Maintenance Director for such Owner's quarterly pro-rata share of budgeted CAM Costs determined by dividing the acreage of such Owner's Parcel by the total acreage contained in the Shopping Center as a whole. The Maintenance Director shall furnish each Owner with copies of all paid invoices for CAM Costs, and an Owner will have no obligation to render payment to the Maintenance Director for CAM Costs incurred unless and until the Maintenance Director provides such Owner with the foregoing items. Any CAM Cost single expense item not contained in the budget (excluding the costs of snow removal) whereby the pro rata share of the Wal-Mart Tract or the Lowe's Tract of such charge shall exceed Two Thousand Dollars (\$2,000.00) shall not be charged unless Wal-Mart and Lowe's specifically approved such expense in writing prior to the Maintenance Director contracting for such services. Each Consenting Owner shall have the right to audit the Maintenance Director's records to determine the validity of CAM Costs in accordance with Section 7.2.(a). The Maintenance Director may bill the Owners for CAM Costs no more frequently than quarterly. Within sixty (60) days after the end of each calendar year, the Maintenance Director shall reconcile CAM Costs actually incurred during such calendar year against the pro rata share actually paid by each Owner pursuant to the annual budget for such calendar year. In the event that the amount of CAM Costs paid

to the Maintenance Director by any Owner for such calendar year exceed such Owner's pro rata share of CAM Costs actually incurred, such overpayment shall be credited against the quarterly payment(s) next due from such Owner. In the event that CAM Costs actually incurred exceed budgeted CAM Costs for such calendar year, the Maintenance Director shall provide each Owner with an invoice for such Owner's pro rata share of such excess CAM Costs, accompanied by reasonable documentation thereof, and, subject to the restrictions on payment of CAM Costs in this Section 7.2, each Owner shall pay such invoice within thirty (30) days after receipt thereof.

(iii) Each Owner shall have the right, not more frequently than once in any calendar year, to audit all of the Maintenance Director's or the Maintenance Director's agents' records pertaining to CAM Costs, taxes and insurance utilizing a representative of such Owner's choice. In the event it is determined that the Maintenance Director has over-billed such Owner in excess of two percent (2%) for its CAM Costs, the Maintenance Director shall reimburse such Owner for all reasonable expenses of such audit. In the event such audit shall determine that the Maintenance Director has underbilled such Owner, such Owner shall pay the amount by which it was underbilled within thirty (30) days after a receipt by such Owner of an invoice for such amount. The Maintenance Director shall retain its records regarding CAM Costs for a period of at least two (2) years following the final billing for the calendar year in question. Any audits shall be conducted upon thirty (30) days prior written notice to the Maintenance Director at its office during normal business hours.

(d) By Agent. Subject to the mutual agreement of the Consenting Owners or at Developer's option subject to all of the conditions and limitations of this Section 7.2, a third party may be appointed as an agent of the Parties 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 all Consenting Owners to cover supervision, management, accounting and similar fees, which sums are to be included in the general maintenance expense paid by the respective Owners of the Common Areas.

(e) Right to Self-Maintain. Notwithstanding anything to the contrary herein, each of Lowe's and Wal-Mart shall have the right at any time to elect to maintain or cause to be maintained the Common Areas on its Tract (excluding any Common Maintenance Areas on its Tract) at its own expense. For any period during which Lowe's or Wal-Mart maintains the Common Areas on its Tract, it shall maintain such Common Areas in accordance with the maintenance standards set forth in Section 7.2 above, and Lowe's or Wal-Mart, as applicable, shall be responsible for the costs of such maintenance but shall have no obligation to pay any CAM Costs to the Maintenance Director (except for costs of maintenance of the Common Maintenance Areas, which may include a management fee not to exceed ten percent (10%) of such costs).

7.3 Taxes. Each Owner 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 Common Areas owned by it.

8. Signs.

8.1 No sign shall be located on the Common Areas on the Wal-Mart Tract or the Lowe's Tract except signs advertising businesses conducted thereon. No sign shall be located on the Developer Tract except signs advertising businesses located on any portion of the Developer Tract, except as otherwise expressly provided herein for the benefit of the occupants of the Wal-Mart Tract and the Lowe's Tract. There shall be two (2) multiple occupant pylon signs ("Pylon Signs") in the Shopping Center in the locations shown on the Site Plan as "Pylon Signs" 1 and 2. The Owner of the Lowe's Parcel shall be entitled to have and maintain a sign panel thereon in the top and most prominent position on both sides of Pylon Sign 2, as well as the right to have and maintain a sign panel in the second position on both sides of Pylon Sign 1. The Owner of the Wal-Mart Parcel shall be entitled to have and maintain a sign panel thereon in the top and most prominent position on both sides of Pylon Sign 1, as well as the right to have and maintain a sign panel in the second position on both sides of Pylon Sign 2. The locations of Pylon Sign 1 and 2 shall be as shown on Exhibit D-3.

8.2 The cost of constructing, maintaining, repairing, and replacing any Center Sign shall be paid by Developer, Wal-Mart and Lowe's in the proportion that the total square footage of the sign panel or panels each Party is entitled to display on such Center Sign bears to the total square footage of all sign panels to be displayed thereon. Each Party shall provide and maintain its own sign panels. Any designation of the Shopping Center on a Center Sign shall be treated as a sign panel attributed to the Developer Tract for purposes of cost proration.

8.3 Monument signs shall be permitted in the locations shown on the Site Plan.

9. Indemnification/Insurance.

9.1 Indemnification. Each Owner hereby indemnifies and saves each other Owner 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, except if caused by the act or negligence of such other Owner.

9.2 Insurance.

(a) Each Owner shall procure and maintain in full force and effect throughout the term of this Agreement general public liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon, in or about its Parcel, each Owner's insurance to afford protection to the limit of not less than \$2,000,000.00 for injury or death of a single person, and to the limit of not less than \$2,000,000.00 for any one occurrence, and to the limit of not less than \$2,000,000.00 for property damage. Each Owner shall provide each other Owner with certificates of such insurance from time to time upon written request to evidence that such insurance is in force. Such insurance may be written by additional premises endorsement on any master policy of insurance carried by an Owner which may cover other

property in addition to the property covered by this Agreement. Such insurance shall provide that the same may not be canceled without ten (10) days prior written notice to the Consenting Owners.

(b) At all times during the term of this Agreement, each Owner shall keep improvements on its Parcel 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 the state in which the Shopping Center is located, with such insurance to be for the full replacement value of the insured improvements.

(c) Policies of insurance provided for in this Article 9 shall name each of the Consenting Owners as insureds as their respective interests may appear, and each of them shall provide to the other certificates evidencing the fact that such insurance has been obtained.

(d) Each Owner for itself and its property insurer hereby releases the other Owners from and against any and all claims, demands, liabilities or obligations whatsoever for damage to such Owner's property or loss of rents or profits of such Owner 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 negligence or the contributory negligence of the Owner being released or by any agent, associate or employee of the Owner being released, this release being to the extent that such damage or loss is covered by the property insurance which the releasing Owner is obligated hereunder to carry, or, if the releasing Owner is not carrying that insurance, then to the extent such damage or loss would be covered if the releasing Owner were carrying that insurance.

(e) Notwithstanding anything to the contrary contained in this Article 9, 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 the Wal-Mart Tract, Wal-Mart shall have the right to retain (in whole or in part) the financial risk for any claim.

(f) Notwithstanding anything to the contrary contained in this Article 9, so long as the net worth of Lowe's in combination with its parent corporation shall exceed One Hundred Million Dollars (\$100,000,000.00), and so long as Lowe's is owner or lessee of the Lowe's Tract, Lowe's shall have the right to self-insure or carry any deductible amount that Lowe's may choose.

(g) In the event an Owner fails to maintain the insurance required herein, which failure continues for a period of ten (10) days after written notice thereof, such failure shall constitute a breach under this Agreement, and any Consenting Owner may, in addition to such Consenting Owner's other remedies, thereafter obtain and pay for such insurance. The Consenting Owner so curing (the "Curing Owner") shall then invoice the defaulting Owner for the expenses so incurred. If the defaulting Owner does not pay within fifteen (15) days after receipt of the invoice, the Curing Owner shall have a lien on the Parcel of the Defaulting Owner for the amount of the invoice, which amount shall bear interest at the Default Rate from the date of such expiration of said fifteen (15) day period until paid.

10. Eminent Domain.

10.1 Owner's Right To Award. Nothing herein shall be construed to give an Owner any interest in any award or payment made to another Owner in connection with any exercise of eminent domain or transfer in lieu thereof affecting said other Owner's Parcel or giving the public or any government any rights in said Parcel. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of the Common Areas located on the Wal-Mart Tract, the Lowe's Tract, and the Developer Tract, 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.

10.2 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.

10.3 Tenant's Claim. Nothing in this Article 10 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.

10.4 Restoration Of Common Areas. The Owner of any portion of the Common Areas so condemned shall promptly repair and restore the remaining portion of the Common Areas within its respective 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.

11. Rights And Obligations Of Lenders. If by virtue of any right or obligation set forth herein a lien shall be placed upon the Parcel of any Owner, such lien shall expressly be subordinate and inferior to the lien of any first lienholder now or hereafter placed on such tract. Except as set forth in the preceding sentence, however, any holder of a first lien on the Wal-Mart Tract, the Lowe's Tract or the Developer Tract, and any assignee or successor in interest of such first lienholder, shall be subject to the terms and conditions of this Agreement.

12. Expansion Of Shopping Center. The Parties agree that in the event the Shopping Center is expanded by ownership, control of the Parties or 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 7.1(b).

13. Release from Liability. Any person acquiring fee or leasehold title to the Wal-Mart Tract, the Lowe's Tract or the Developer Tract, or any other portion of the Shopping Center as expanded pursuant to Articles 1 or 12 or any portion thereof, shall be bound by this Agreement only as to the Tract or portion of the Tract acquired by such person. In addition, such person shall be bound by this Agreement only during the period such person is the fee or leasehold owner of such Tract or portion thereof, except as to obligations, liabilities or responsibilities that accrue during said period. Although persons may be released under this paragraph, the easements, covenants and

restrictions in this Agreement shall continue to be benefits to and servitudes upon said Tracts running with the land.

14. Breach.

14.1 Remedies for All Owners. Each non-defaulting Owner shall have the right to prosecute any proceedings at law or in equity against any Owner or any other person for breach of any easement or restriction benefiting such non-defaulting Owner. Such proceeding shall include the right to restrain by injunction any such violation or threatened violation and to obtain a decree to compel performance of any such easements or restrictions. No one other than an Owner shall have the right to bring any action to enforce any provision of this Agreement.

14.2 Right to Cure. With respect to any default hereunder, any non-defaulting Owner who is a Consenting Owner shall have the right, but not the obligation, to cure such default by the payment of money or the performance of some other action for the account of and at the expense of the defaulting Owner; provided, however, that in the event the default shall constitute an emergency condition involving an immediate and imminent threat of substantial injury or harm to persons or property, the Curing Owner, acting in good faith, shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstances or, if necessary, due to such emergency, without advance notice, so long as notice is given as soon as possible thereafter. To effectuate any such cure, the Curing Owner shall have the right to enter upon the Parcel of the defaulting Owner (but not into any building) to perform any necessary work or furnish any necessary materials or services to cure the default of the defaulting Owner. Each Owner shall be responsible for the non-performance or default of its occupants and lessees. In the event any Curing Owner shall cure a default, the defaulting Owner shall reimburse the Curing Owner for all costs and expenses incurred in connection with such curative action, plus interest at the Default Rate, within ten (10) business days of receipt of demand, together with reasonable documentation supporting the expenditures made. If the defaulting Owner does not so reimburse within the time provided above, the amounts owed by the Defaulting Owner shall constitute a lien against the Parcel of the defaulting Owner.

14.3 Liens. Any lien created pursuant to the terms of this Agreement shall attach and take effect only upon recordation of a claim of lien in the applicable real estate records office of the county in which the said Parcel is located, by the Curing Owner making the claim. The claim of lien shall include the following:

- (a) The name and address of the lien claimant;
- (b) A statement concerning the basis for the claim of lien and identifying the lien claimant as a Curing Owner;
- (c) An identification by name and address (if known) of the Owner or reputed Owner of the Parcel or interest therein against which the lien is claimed;
- (d) A description of the Parcel against which the lien is claimed;

- of lien;
- (e) A description of the work performed which has given rise to the claim
  - (f) A statement itemizing the total amount due, including interest; and
  - (g) A statement that the lien is claimed pursuant to the provisions of this Agreement, reciting the date, book and page of recordation hereof.

The notice shall be duly executed and acknowledged and contain a certificate that a copy thereof has been served upon the Owner against whom the lien is claimed, by personal service or by mailing pursuant to Article 20 below. The lien so claimed shall attach from the date of recordation solely in the amount claimed thereby and may be enforced in any judicial proceedings allowed by law, including without limitation, suit in the nature of a suit to foreclose a mortgage or mechanic's lien under the applicable provisions of the law of the State in which the Shopping Center is located.

14.4 Other Remedies for Consenting Owners. Each Non-defaulting Owner who is a Consenting Owner shall have the right to prosecute any proceedings at law or in equity against any defaulting Owner hereto, or any other person, violating or attempting to violate or defaulting upon any provision contained in this Agreement, and to recover damages for any such violation or default. Such proceeding shall include the right to restrain by injunction any violation or threatened violation by another of any of such terms, covenants, or conditions of this Agreement, or to obtain a decree to compel performance of any such terms, covenants, or conditions, it being agreed that the remedy at law for a breach of any such term, covenant, or condition (except those, if any, requiring the payment of a liquidated sum) is not adequate.

15. Rights of Successors. The easements, restrictions, benefits and obligations hereunder shall create mutual benefits and servitudes running with the land. This Agreement shall bind and inure to the benefit of the Parties hereto, their respective heirs, representatives, lessees, successors and assigns. The singular number includes the plural and the masculine gender includes the feminine and neuter.

16. Document Execution, Modification and Cancellation. It is understood and agreed that until this document is fully executed by each of Developer, Lowe's and Wal-Mart, there is not and shall not be an agreement of any kind between the Parties hereto upon which any commitment, undertaking or obligation can be founded. This Agreement (including exhibits) may be modified or canceled only by the mutual agreement of the Consenting Owners.

17. Duration. Unless otherwise canceled or terminated, all of the easements granted in this Agreement 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. 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.

19. Notices. Any notice or invoice required or permitted to be given under this Agreement shall be in writing and shall be mailed by certified or registered mail, postage prepaid, or by Federal Express, Airborne Express, or similar overnight delivery service, addressed as follows:

Developer: Boyer Pebblebrook, L.C.  
c/o The Boyer Company, L.C.  
90 South 400 West, Suite 200  
Salt Lake City, Utah 84101  
Attention: Wade Williams

Boyer Quarry Bend, L.C.  
c/o The Boyer Company, L.C.  
90 South 400 West, Suite 200  
Salt Lake City, Utah 84101  
Attention: Wade Williams

Lowe's: Lowe's HIW, Inc.  
Box 1111  
(Highway 268 East, North Wilkesboro, North Carolina 28659)  
North Wilkesboro, North Carolina 28656-0001  
Attention: Property Management Dept. (REO)

and to: Lowe's HIW, Inc.  
Box 1111  
(Highway 268 East, North Wilkesboro, North Carolina 28659)  
North Wilkesboro, North Carolina 28656-0001  
Attention: Real Estate Legal Dept. (REO)

Wal-Mart: Wal-Mart Stores, Inc.  
2001 S.E. 10<sup>th</sup> Street  
Bentonville, Arkansas 72716-0550  
Attention: Realty Management – State of Utah (#5235-01)

and to: Wal-Mart Stores, Inc.  
2001 S.E. 10<sup>th</sup> Street  
Bentonville, Arkansas 72716-0550  
Attention: President (#5235-01)

Such notice shall be effective upon receipt or refusal of delivery. Any Party hereto or their successors may change the address to which notice is to be sent hereunder by providing notice to the other Parties pursuant to the provisions of this Article 20.



20. Attorneys' Fees. In any action or proceeding arising out of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover from the non-prevailing party court costs and reasonable attorneys' fees incurred by the prevailing party in enforcing its rights hereunder, in an amount to be fixed by the court in such action or proceeding.

21. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

22. Entire Agreement. This Agreement constitutes the entire agreement between the Parties. The Parties do not rely upon any statement, promise or representation not herein expressed, and this Agreement 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.

[SIGNATURE PAGES TO FOLLOW]

Signature Page for Pebblebrook:

PEBBLEBROOK:

BOYER PEBBLEBROOK, L.C.,  
a Utah limited liability company

By: THE BOYER COMPANY, LC.,  
a Utah limited liability company  
Its: Manager

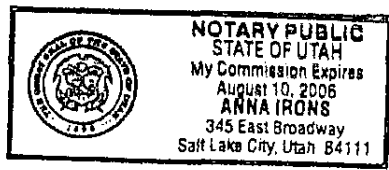
By: [Signature]  
Name: Don M Glenn  
Title: Manager

STATE OF UTAH                                    )  
  ) ss.  
COUNTY OF SALT LAKE                    )

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of November 2005,  
by Don M Glenn, Manager of The  
Boyer Company, L.C., a Utah limited liability company, the Manager of BOYER  
PEBBLEBROOK, L.C..

[Signature]  
NOTARY PUBLIC  
Residing at: Salt Lake

My Commission Expires:  
8-10-06



Signature Page for Quarry Bend:

QUARRY BEND:

BOYER QUARRY BEND, L.C.,  
a Utah limited liability company

By: THE BOYER COMPANY, LC.,  
a Utah limited liability company

Its: Manager

By: [Signature]  
Name: Dean M. Glenn  
Title: Manager

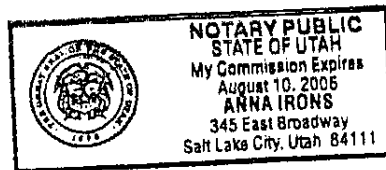
STATE OF UTAH )  
 ) ss.  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of November, 2005,  
by Dean M. Glenn, Manager of The  
Boyer Company, L.C., a Utah limited liability company, the Manager of BOYER QUARRY  
BEND, L.C..

[Signature]  
NOTARY PUBLIC  
Residing at: Salt Lake City

My Commission Expires:

8-10-06



Signature Page for Wal-Mart:

Approved as to legal terms only  
By ALW  
WAL-MART LEGAL TEAM  
Date 11-22-05

WAL-MART:

WAL-MART REAL ESTATE BUSINESS TRUST,  
a Delaware statutory trust

By: [Signature]  
Name: Daniel Mallory  
Title: Assistant Vice-President

STATE OF ARKANSAS )  
COUNTY OF BENTON ) ss.

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of November, 2005,  
by Daniel Mallory, Asst. Vice-President of Wal-  
Mart Real Estate Business Trust, a Delaware statutory trust.

[Signature]  
NOTARY PUBLIC  
Residing at: Centerfork, AR

My Commission Expires:

CINDY HOMBS  
NOTARY PUBLIC-STATE OF ARKANSAS  
BENTON COUNTY  
My Commission Expires 02-25-2007



**Exhibit A  
To ECR**

All of Lot 2 and Lot 4 of Quarry Bend Subdivision located in Sandy, Utah recorded as an entry  
in Book 2005P Page 392 with Salt Lake County.

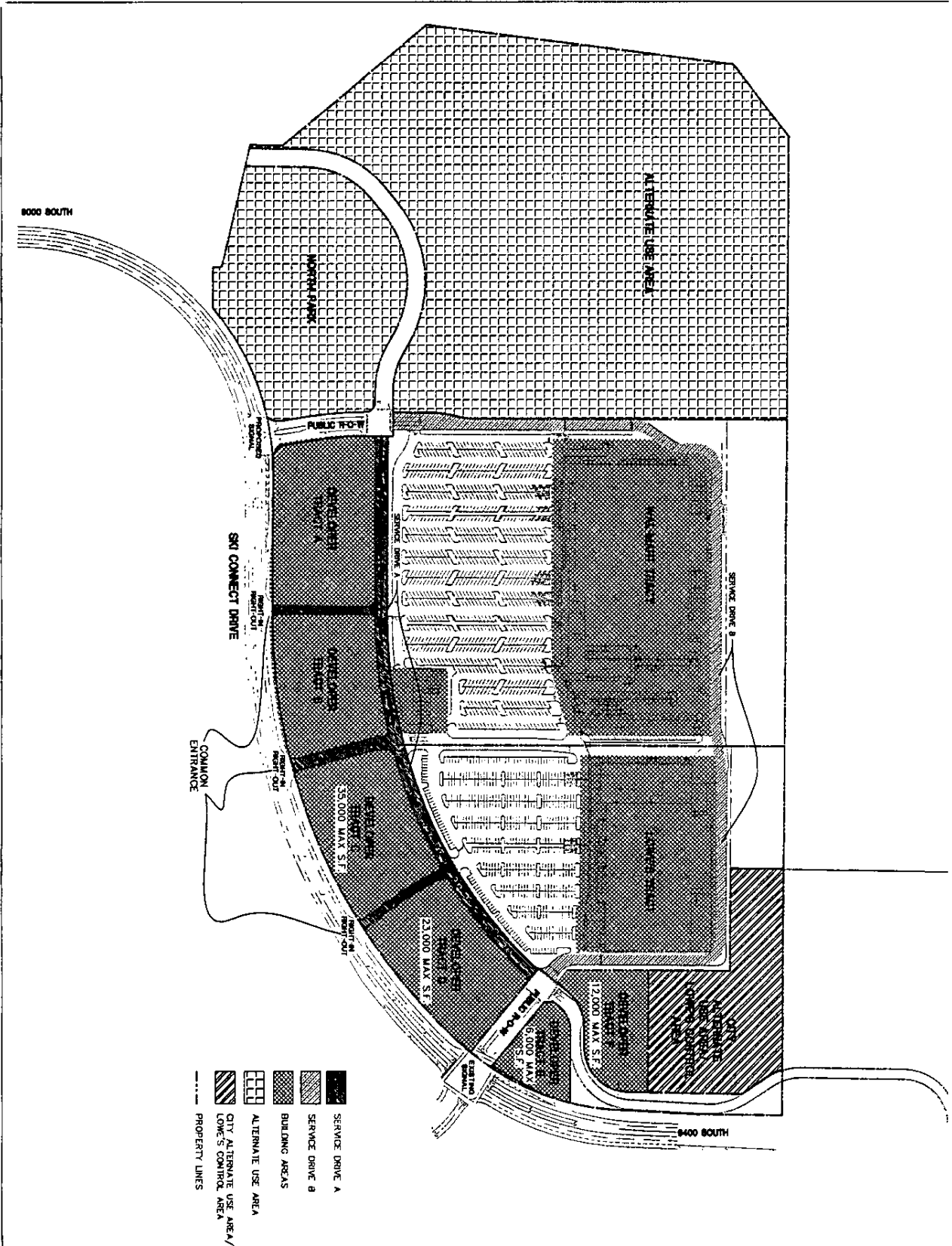
**Exhibit B**  
**To ECR**

All of Lot 1 of Quarry Bend Subdivision located in Sandy, Utah recorded as an entry in Book  
2009P Page 392 with Salt Lake County.

**Exhibit C**  
**To ECR**

All of Lot 3, Lot 5 and Lot 8 of Quarry Bend Subdivision located in Sandy, Utah recorded as an entry in Book 2005P Page 392 with Salt Lake County.





EX-D-1

DATE: 10/15/01

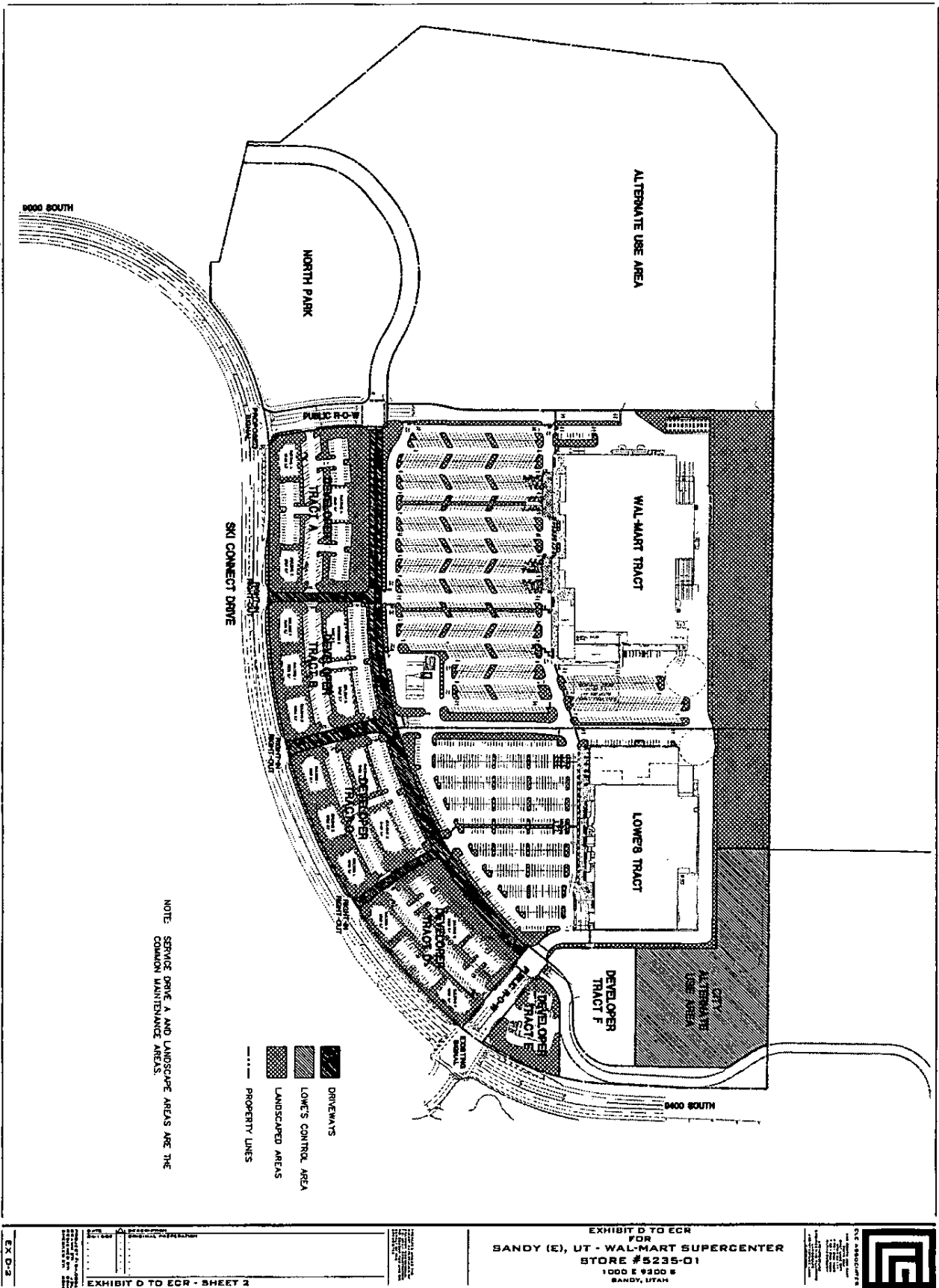
PROJECT: WAL-MART SUPERCENTER

EXHIBIT D TO ECR - SHEET 1

EXHIBIT D TO ECR  
FOR  
BANDY (E), UT - WAL-MART SUPERCENTER  
STORE #5235-01  
1000 E #200 S  
BANDY, UTAH

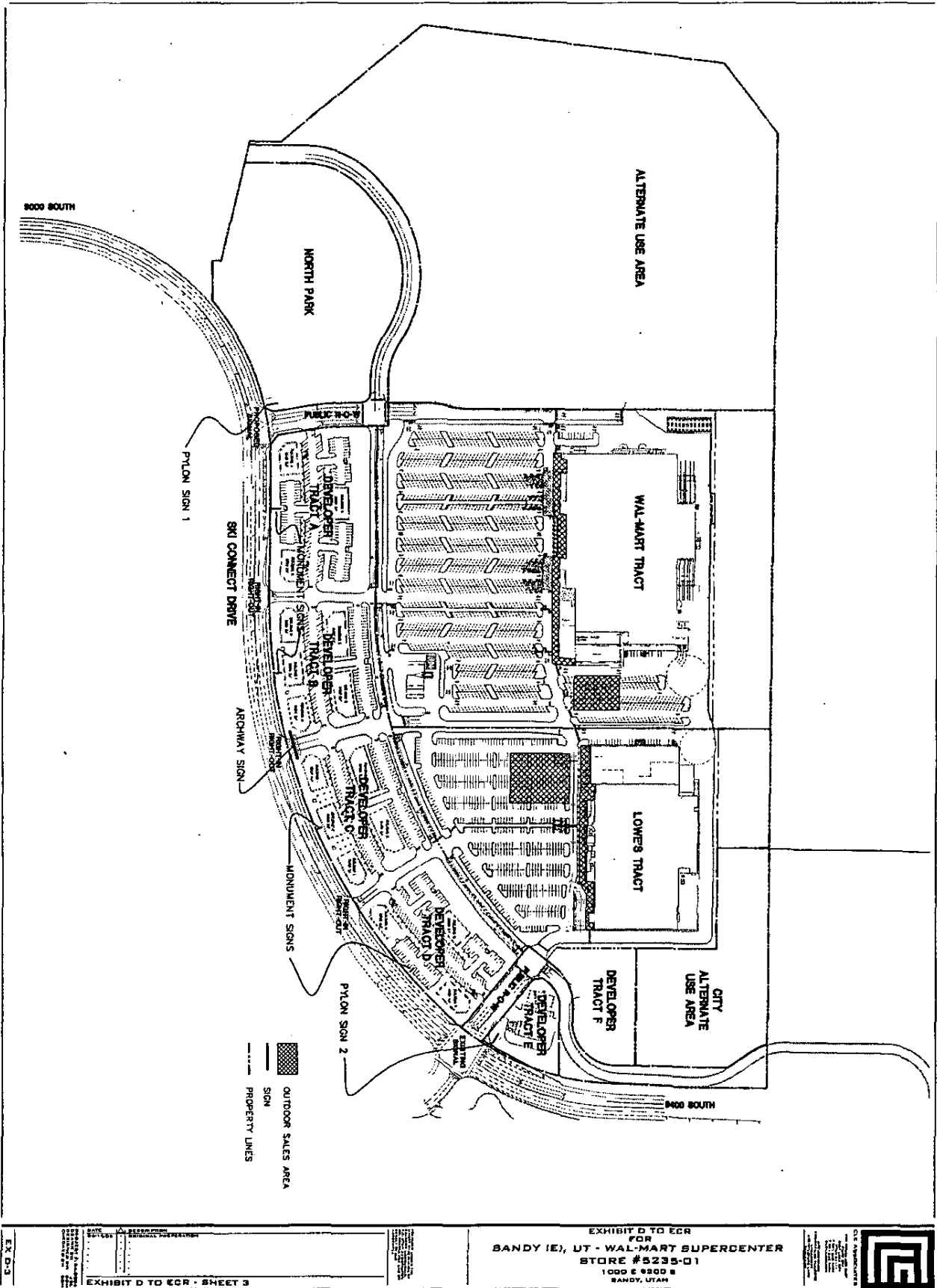


EXHIBIT D-2



<p>EX-D-2</p>	<p>EXHIBIT D TO ECR - SHEET 2</p>	<p>EXHIBIT D TO ECR FOR SANDY (E), UT - WAL-MART SUPERCENTER STORE #5235-01 1000 E 9300 S SANDY, UTAH</p>	
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EXHIBIT D-3



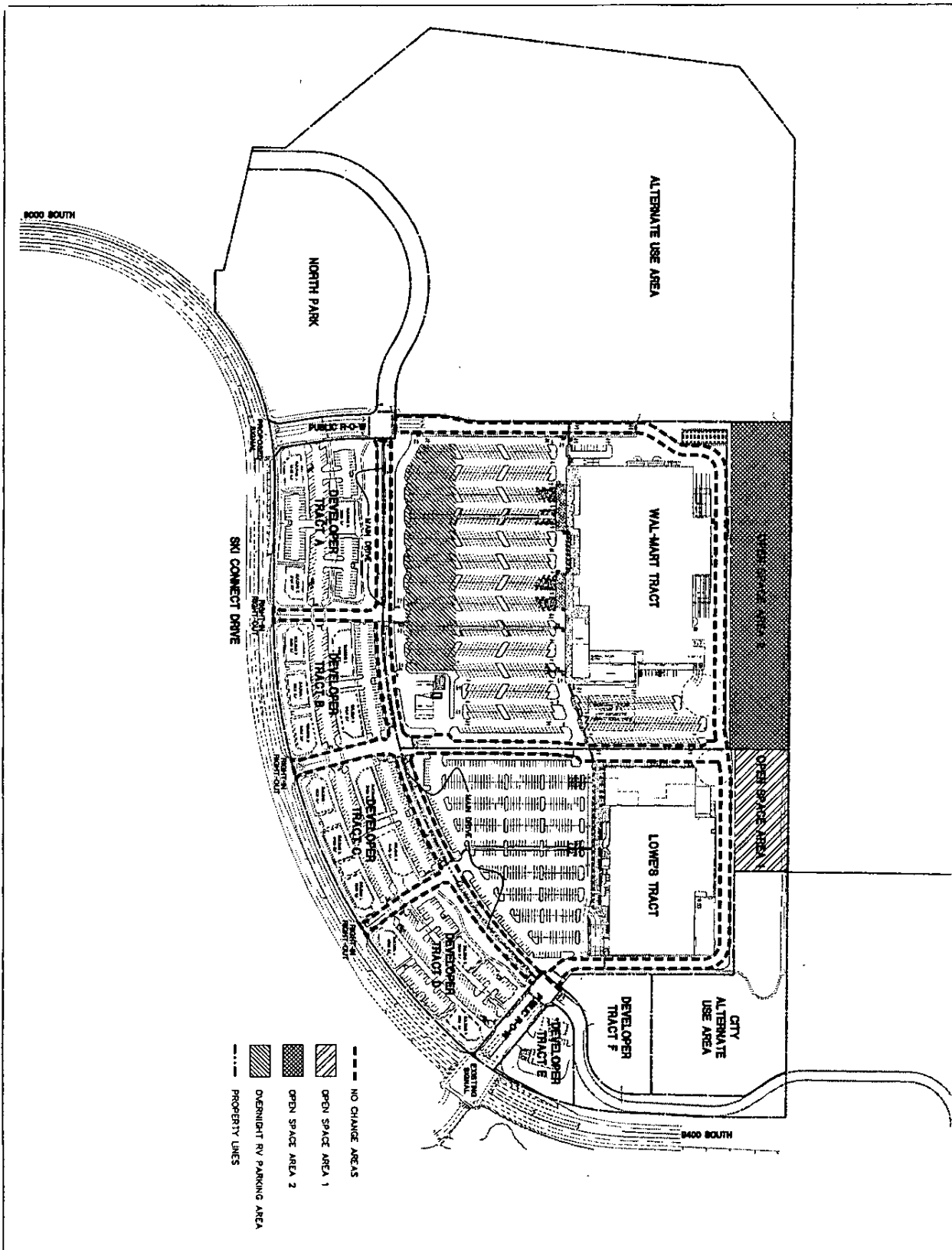
DATE	BY	DESCRIPTION

EXHIBIT D TO ECR - SHEET 3

EXHIBIT D TO ECR  
FOR  
BANDY (E), UT - WAL-MART SUPERCENTER  
STORE #5235-01  
1000 E 8200 S  
SANDY, UTAH



EXHIBIT D-4



EX-D-4

DATE	DESCRIPTION

EXHIBIT D TO ECR - SHEET 4

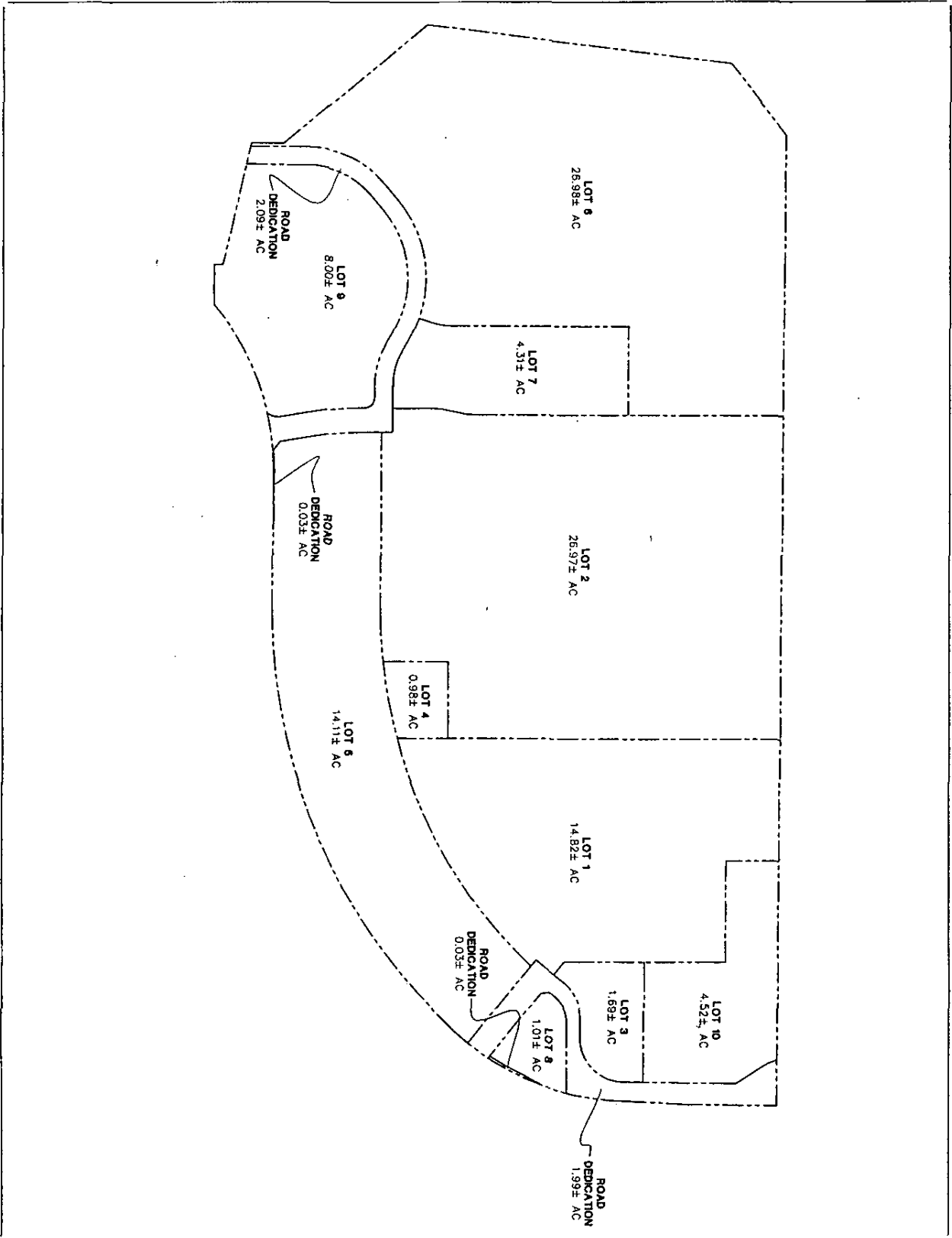
DESIGNED BY  
 CHECKED BY  
 DRAWN BY  
 DATE

EXHIBIT D TO ECR  
 FOR  
**SANDY (E), UT - WAL-MART SUPERCENTER**  
**STORE #5235-01**  
 1000 E 9200 S  
 SANDY, UTAH

SCALE  
 1" = 100'



EXHIBIT D-5



EX-0-5	EXHIBIT D TO ECR - SHEET 5
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EXHIBIT D TO ECR  
FOR  
BANDY (E), UT - WAL-MART SUPERCENTER  
STORE #5235-01  
1000 E 9200 S  
BANDY, UTAH

EXHIBIT D TO ECR  
FOR  
BANDY (E), UT - WAL-MART SUPERCENTER  
STORE #5235-01  
1000 E 9200 S  
BANDY, UTAH

**EXHIBIT E-1**

(Legal Description of Residential Alternate Use Area and "North Park" Area)

All of Lot 6, Lot 7 and Lot 9 of Quarry Bend Subdivision located in Sandy, Utah recorded as an entry in Book 20098 Page 392 with Salt Lake County.

**EXHIBIT E-2**

(Legal Description of City Alternate Use Area)

All of Lot 10 of Quarry Bend Subdivision located in Sandy, Utah recorded as an entry in Book 2005P  
Page 392 with Salt Lake County.