

E 2095439 B 3845 P 1435-1454
RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
08/09/2005 04:34 PM
FEE \$53.00 Pgs: 20
DEP RTT REC'D FOR METRO NATIONAL T
ITLE

When recorded return to:
Thomas E. Halter
Gust Rosenfeld P.L.C.
201 East Washington, Suite 800
Phoenix, AZ 85004-2327

*Syracuse Wal-Mart 1, 2, 3, 4, 5 & 6
12-606 +*

Syracuse, UT (#3848)

**EASEMENTS WITH COVENANTS AND
RESTRICTIONS AFFECTING LAND ("ECR")**

THIS AGREEMENT is made as of the 9th day of August, 2005, between **WAL-MART REAL ESTATE BUSINESS TRUST**, a Delaware statutory trust, of 2001 S.E. Tenth Street, Bentonville, Arkansas 72716 ("Wal-Mart"), and **HOLROB INVESTMENTS, LLC**, a Tennessee limited liability company, of 5500 Lonas Drive, Suite 300, Knoxville, TN 37909 ("Developer").

WITNESSETH:

WHEREAS, Wal-Mart is the owner of the Wal-Mart Tract as shown on the plan attached hereto as Exhibit A-1 hereof, said tract being more particularly described in Exhibit B attached hereto;

WHEREAS, Developer is the owner of the Developer Tract and the Outparcel shown on the plan attached hereto as Exhibit A-1 hereof, the same being more particularly described in Exhibit C hereof;

WHEREAS, Wal-Mart and Developer desire that the Wal-Mart 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 and the Outparcel 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 and Developer do hereby agree as follows:

1. Building/Common Areas.

a. "Building Areas" as used herein shall mean that portion of the Wal-Mart Tract and those portions of the Developer Tract shown on Exhibit A-2 as "Building Area" (and "Future Building Area" and "Future Expansion Area") Canopies

20/00
48
+ 5⁰⁰

may encroach from the Building Areas over the Common Areas provided the canopies do not interfere with the use of the Common Areas. The Developer Tract and the Wal-Mart Tract may be further subdivided.

b. "Common Areas" shall be all of the Wal-Mart Tract and the Developer Tract except the Building Areas.

c. 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 (including Paragraph 6.a.(3)), 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

2. Use. 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, offices, and retail stores. No theatre, bowling alley, billiard parlor, night club or any business deriving in excess of thirty-five percent (35%) of its gross sales from the sale of alcoholic beverages shall occupy space within the Shopping Center without the prior written consent of Wal-Mart. No building may devote in excess of five percent (5%) of its building square footage to recreation or amusement uses without the prior consent of Wal-Mart. Developer recognizes that all said businesses may inconvenience Wal-Mart's customers and adversely affect Wal-Mart's business. 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.

3. Competing Business. 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 shall be leased or occupied by or conveyed to any other party for use as a membership warehouse club, a pharmacy, a discount department store or other discount store, as a grocery store or as any combination of the foregoing uses. In addition, 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 or the Outparcel shall be leased or occupied by or conveyed to any other party for use as a facility dispensing gasoline or fuel from pumps. "Discount department store" and/or "discount store", as those terms are used herein, shall mean a discount department store or discount store containing more than 30,000 square feet of building space used for the purpose of selling a full line of hard goods and soft goods (e.g. clothing, cards, gifts, electronics, garden supplies, furniture, lawnmowers, toys, health and beauty aids, hardware items, bath accessories and auto accessories) at a discount in a retail operation similar to that

of Wal-Mart. In the event of a breach of these covenants, Wal-Mart shall have the right to terminate this Agreement and to seek any and all remedies afforded by either law or equity.

4. Buildings.

a. Design and Construction. The Buildings 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 4.d. below. The design and construction shall be of high quality. No building on the Wal-Mart Tract shall exceed forty-five feet (45') in height above finished grade. No building on the Developer Tract shall exceed thirty-six feet (36') in height above finished grade. No building shall have a metal exterior except the metal roof portions of the building which match the architectural theme of the Shopping Center.

b. Location. No building shall be constructed on the Wal-Mart Tract and the Developer Tract (as either immediate development or future expansion) except within the Building Areas. The front wall(s) of the building(s) on the Wal-Mart Tract and the Developer Tract shall be constructed in the location shown in Exhibit A-2.

c. 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.

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

e. Outparcel Development. The Outparcel shall be developed only under the following guidelines.

(1) The building constructed on the Outparcel shall not exceed twenty-two (22) feet in height, as measured from the mean finished elevation of the parking area of the Shopping Center, provided however, buildings may contain architectural embellishment which cover not more than 25% of the roof line which shall not exceed thirty-six (36) feet in height, as measured from the mean finished elevation of the parking area of the Shopping Center.

(2) Any rooftop equipment shall be screened in a manner satisfactory to the Developer.

(3) No rooftop sign shall be erected on the building constructed

(4) No freestanding identification sign may be erected on the Outparcel without approval of the Developer, and in no event shall such

freestanding identification sign exceed the height of the shopping center pylon sign or block the visibility of the Wal-Mart Store. Notwithstanding the foregoing, there may be erected entrance-exit signs to facilitate the free flow of traffic, which entrance-exit signs shall be of a monument type, not to exceed 3'3" in height, the type and location of such signs to be approved by Developer.

(5) No improvements shall be constructed, erected, expanded or altered on the Outparcel until the plans for same (including site layout, exterior building materials and colors and parking) have been approved in writing by Developer. No building or structure of any kind shall be erected on the Outparcel except upon that area designated as a building area on Exhibit A-2, 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.

(6) In developing and using the Outparcel, the owner of the Outparcel shall continuously provide and maintain a parking ratio on such Outparcel equal to one of the following: (i) fifteen (15) spaces for every one thousand (1,000) square feet of building space for any cafeteria or any restaurant or entertainment use in excess of five thousand (5,000) square feet (the same ratio shall be provided for a McDonald's Restaurant, notwithstanding a building footprint of less than five thousand (5,000) square feet); or (ii) ten (10) spaces for every one thousand (1,000) square feet of building space for any restaurant or entertainment use less than five thousand (5,000) square feet (subject to the exception above); or (iii) five (5.0) spaces per one thousand (1,000) square feet of building space for any other use. In addition, the owner shall cause landscaping areas to be added and maintained in conjunction with any building or other improvement constructed on the Outparcel.

(7) The Outparcel shall be kept neat, orderly, planted in grass and trimmed until improved and constructed.

(8) Subject to the prior written consent of Developer, any building, structure or improvement on the Outparcel shall be used for retail or commercial purposes only, however, no building, structure or improvement on the Outparcel may be used as a theater, night club, bowling alley, health spa, cafeteria, billiard parlor or other place of recreation or amusement, or as a business deriving in excess of thirty-five percent (35%) of its gross sales from the sale of alcoholic beverages or as a pharmacy, a discount department store, membership warehouse club, grocery store, a retail facility dispensing gasoline or fuel from pumps, a variety, general or "dollar" store or as any combination of the foregoing uses. "Discount department store" and/or "discount store", as those terms are used herein, shall mean a discount department store or discount store containing more than 30,000 square feet of building space used for the purpose of selling a full line of hard goods and soft goods (e.g. clothing, cards, gifts, electronics, garden supplies, furniture, lawnmowers, toys, health and beauty aids, hardware items, bath accessories and auto accessories) at a discount in a retail operation similar to that of Wal-Mart.

(9) The owner(s) of the Outparcel or Developer shall maintain comprehensive public liability insurance, property damage and all-risk hazard insurance on the Outparcel their buildings, appurtenances and other improvements located thereon. Such insurance shall (i) be carried with reputable companies licensed to do business in the state in which the Outparcel are located; (ii) have liability limits of at least \$5,000,000.00 for each occurrence, bodily injury and property damage combined; (iii) provide for full replacement value for the buildings and improvements covered thereunder; and (iv) not be subject to change, cancellation or termination without at least thirty (30) days prior written notice to Developer.

5. Common Areas.

a. 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 for roadways, walkways, ingress and egress, parking of motor vehicles, 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. In addition to the foregoing, Wal-Mart and Developer hereby grant for the benefit of those certain Outparcel now owned by Developer and identified on Exhibit A-1, nonexclusive easements for vehicular and pedestrian access, ingress, and egress over and across the Wal-Mart Tract and the Developer Tract; provided, however, in no event shall the owner, occupant, licensee or invitee of any of the Outparcel be permitted to use the Wal-Mart Tract or the Developer Tract for vehicular parking or for any other purpose other than as described above. Without limiting the generality of the foregoing, Wal-Mart hereby grants to the Developer the right to construct the access points depicted on Exhibit A-2 from the Developer Tract and Outparcel onto the Wal-Mart Tract (collectively the "Access Cuts"). The Access Cuts shall not be located in any locations other than the locations depicted on Exhibit A-2 without the prior written consent of Wal-Mart and the Developer.

b. Limitations on Use.

(1) Customers. Each party 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 and the Developer Tract.

(2) Employees. Each party shall use reasonable efforts to ensure that employees shall not park on the Common Areas, except in areas designated on Exhibit A-2 as "employee parking areas," if any. The parties hereto may from time to time mutually designate and approve "employee parking areas" not shown on Exhibit A-2.

(3) General. Any activity within the Common Areas other than its primary purpose of the Common Areas, which is to provide for parking for the

customers, invitees and employees of those businesses conducted within 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. Persons using the Common Areas in accordance with this Agreement shall not be charged any fee for such use.

c. Utility and Service Easements. The parties shall cooperate in the granting of appropriate and proper easements for the installation, repair and replacement of storm drains, sewers, utilities and other proper services necessary for the orderly development and operation of the Shopping Center and the Outparcel. Both parties shall use their best efforts to cause the installation of such utility and service lines prior to paving of the Common Areas. No such lines, sewers, utilities or services of one party shall be installed within the Building Areas on the other party's parcel.

d. Water Flow. Any alteration in the natural water flow which may occur as a natural consequence of normal construction activities and the existence of the party's improvements substantially as shown on Exhibit A-2 (including without limitation building and building expansion, curbs, drives and paving) shall be permitted.

6. Development, Maintenance, and Taxes.

a. Development.

(1) Arrangement. The arrangement of the Common Areas shall not be changed in a manner inconsistent with the provisions of this Agreement.

(2) "Parking Area" Ratio. 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 three-quarters (4.75) car spaces for each one thousand (1,000) square feet of building or buildings on the Wal-Mart Tract. The Developer agrees that at all times there shall be independently maintained on the Developer Tract parking area sufficient to accommodate not fewer than (i) fifteen (15) spaces for every one thousand (1,000) square feet of building space for any cafeteria or any restaurant or entertainment use in excess of five thousand (5,000) square feet, (ii) ten (10) spaces for every one thousand (1,000) square feet of building space for any restaurant or entertainment use less than five thousand (5,000) or (iii) five (5.0) spaces per one thousand (1,000) square feet of building space for any other use.

(3) Development Timing. Concurrent with any building being constructed within the Building Areas of either tract by the owner of said tract (the "Developing Party"), the Common Areas of that tract shall be developed in accordance with Exhibit A-2 at the expense of such Developing Party. In the event such construction by the Developing Party shall occur prior to the development of the other tract, the Developing Party shall have the right to grade, pave and use any portion of the Common Areas of the non-developing party's tract for access and for construction of,

but not limited to, drainage structures and utility lines as is necessary to provide essential services to the Developing Party's tract.

(4) Service Drive. Wal-Mart agrees that the "Service Drive," depicted on Exhibit A-2 shall be developed simultaneously with the development and construction on the Wal-Mart Tract by Wal-Mart. In the event the Developer elects to develop the Developer Tract or the Outparcel prior to the Wal-Mart development on the Wal-Mart Tract, the Developer shall have the right, at its sole cost and expense, to construct the Service Drive. In the exercise of the Developer's rights granted pursuant to this Section 6(a)(4), the Developer shall cause the Service Drive to be constructed in accordance with Wal-Mart required design and construction standards.

b. Maintenance.

(1) Standards. Following completion of the improvements on the Common Areas, the parties hereto shall maintain the Common Areas in good condition and repair. The maintenance is to include, without limitation, the following:

(a) 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;

(b) 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;

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

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

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

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

(2) Expenses. The respective owners shall pay the maintenance expense of their tracts.

(3) By Agent. Subject to the mutual agreement of the parties hereto, 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 parties 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.

c. Taxes. Each of the parties 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.

7. Signs. No sign shall be located on the Common Areas on the Wal-Mart Tract and the Developer Tract except signs advertising businesses conducted thereon of which, there shall be no more than three (3) signs on the Common Areas on the Wal-Mart Tract and three (3) signs (in addition to the Tower Sign, as hereafter defined) on the Common Areas on the Developer Tract. No signs shall obstruct the ingress and egress shown on Exhibit A-2. In the event that the Developer in the Developer's discretion elects to construct the Tower Sign at the location depicted on Exhibit A-2 and in the event that retail signage is permitted to be placed thereon, then effective from and after the completion of the construction of the Tower Sign, the Developer hereby grants to Wal-Mart an easement on the top tenant position for signage purposes on each side of said Tower Sign that is permitted to display signage. In no event shall any other entity be allocated more square footage of signage on the Tower Sign than Wal-Mart.

8. Indemnification/Insurance.

a. Indemnification. Each party hereby indemnifies and saves the other party 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 the other party hereto.

b. Insurance.

(1) Wal-Mart and the Developer (for the Developer Tract and the Outparcel until such time as the Outparcel are sold or leased to other parties who shall thereby assume this obligation) 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 property, each party's insurance to afford protection to the limit of not less than \$5,000,000.00 for injury or death of a single person, and to the limit of not less than \$5,000,000.00 for any one occurrence, and to the limit of not less than \$5,000,000.00 for property damage. Each party shall provide the other party 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 the party 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 other party.

(2) At all times during the term of this Agreement, each party shall keep improvements on its property 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 parties' respective properties are located, with such insurance to be for the full replacement value of the insured improvements.

(3) Policies of insurance provided for in this Paragraph 8 shall name Wal-Mart and Developer 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.

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

(5) Notwithstanding anything to the contrary contained in this Paragraph 8, 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.

9. Eminent Domain

a. Owner's Right To Award. Nothing herein shall be construed to give either party any interest in any award or payment made to the other party in connection with any exercise of eminent domain or transfer in lieu thereof affecting said other party's tract or giving the public or any government any rights in said tract. 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 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.

b. 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.

c. Tenant's Claim Nothing in this Paragraph 9 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.

d. 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.

10 Rights And Obligations Of Lenders If by virtue of any right or obligation set forth herein a lien shall be placed upon the tract of either party hereto, 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 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.

11. 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 6.a.(2).

12. Release from Liability. Any person acquiring fee or leasehold title to the Wal-Mart Tract or the Developer Tract, or any expansion of the Shopping Center pursuant to Paragraph 11 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 of the tract, 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.

13. Breach. In the event of breach or threatened breach of this Agreement, only all record owners of the Wal-Mart Tract as a group, or all record owners of the Developer Tract as a group, or Wal-Mart so long as it or any affiliate has an interest as owner or lessee of the Wal-Mart Tract or Developer so long as it or any affiliate has an interest as owner or lessee of the Developer Tract, shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach. The unsuccessful party in any action shall pay to the prevailing party a reasonable sum for attorney's fees, which shall be deemed to have accrued on the date such action was filed.

14. 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.

15. Document Execution, Modification and Cancellation. It is understood and agreed that until this document is fully executed by both Developer 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 (a) Wal-Mart as long as it or its affiliate has any interest as either owner or lessee of the Wal-Mart Tract, or its successors in interest, and (b) Developer, as long as it or its affiliate has any interest as either owner or lessor of the Developer Tract, or its successors in interest

16. Non-Merger. So long as Wal-Mart or its affiliate is owner or lessee of the Wal-Mart Tract, this Agreement shall not be subject to the doctrine of merger.

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. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which, together, shall constitute one and the same instrument.

20. Notices. All notices and other communications required or permitted to be given hereunder 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.

Wal-Mart: Wal-Mart Real Estate Business Trust (Store No. #3848)
2001 S.E. 10th Street
Bentonville, AR 72716-0550
Attention: President

With a copy to:
Wal-Mart Real Estate Business Trust (Store No. #3848)
Attention: Property Management, State of Utah
2001 S.E. 10th Street
Bentonville, AR 72716-0550

Developer: Holrob Investments, LLC
5500 Lonas Drive
Suite 300
Knoxville, TN 37909
Attention: Mr. Robert S. Talbott

Notices shall be effective upon receipt or refusal. In the event that any person acquires a fee interest in the Shopping Center said person shall be entitled to provide a request for notice to the addressees listed above, which request, in order to be effective, must also be recorded in the county recorder's office in the county in which the Shopping Center is located. Any party shall be entitled to change its address for notice by providing notice of such change and recording a copy of the notice of such change in the county recorder's office in the county recorder's office in the county in which the Shopping Center is located. Until such time as the notice of change is effective pursuant to the terms of this Section 20 and until such time as it is recorded as required above, the last address of said party shall be deemed to be the proper address of said party.

21. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto. 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.

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

Approved as to legal terms only
By AKM
WAL-MART LEGAL TEAM
Date 8-1-05

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

By [Signature]
Barry T. Shanahan
Its Assistant Vice President

"Wal-Mart"

**HOLROB INVESTMENTS, LLC, a
Tennessee limited liability company**

By _____
Robert S. Talbott
Its President

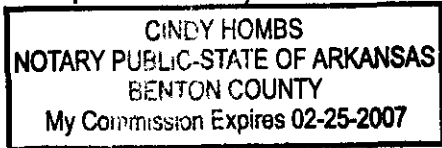
"Developer"

State of Arkansas

County of Benton

The foregoing instrument was acknowledged before me this 2nd day of August, 2005, by Barry T. Shannahan, an Assistant Vice President of Wal-Mart Real Estate Business Trust, a Delaware statutory trust, on behalf of the trust.

(Seal and Expiration Date)



Cindy Hombs

Notary Public

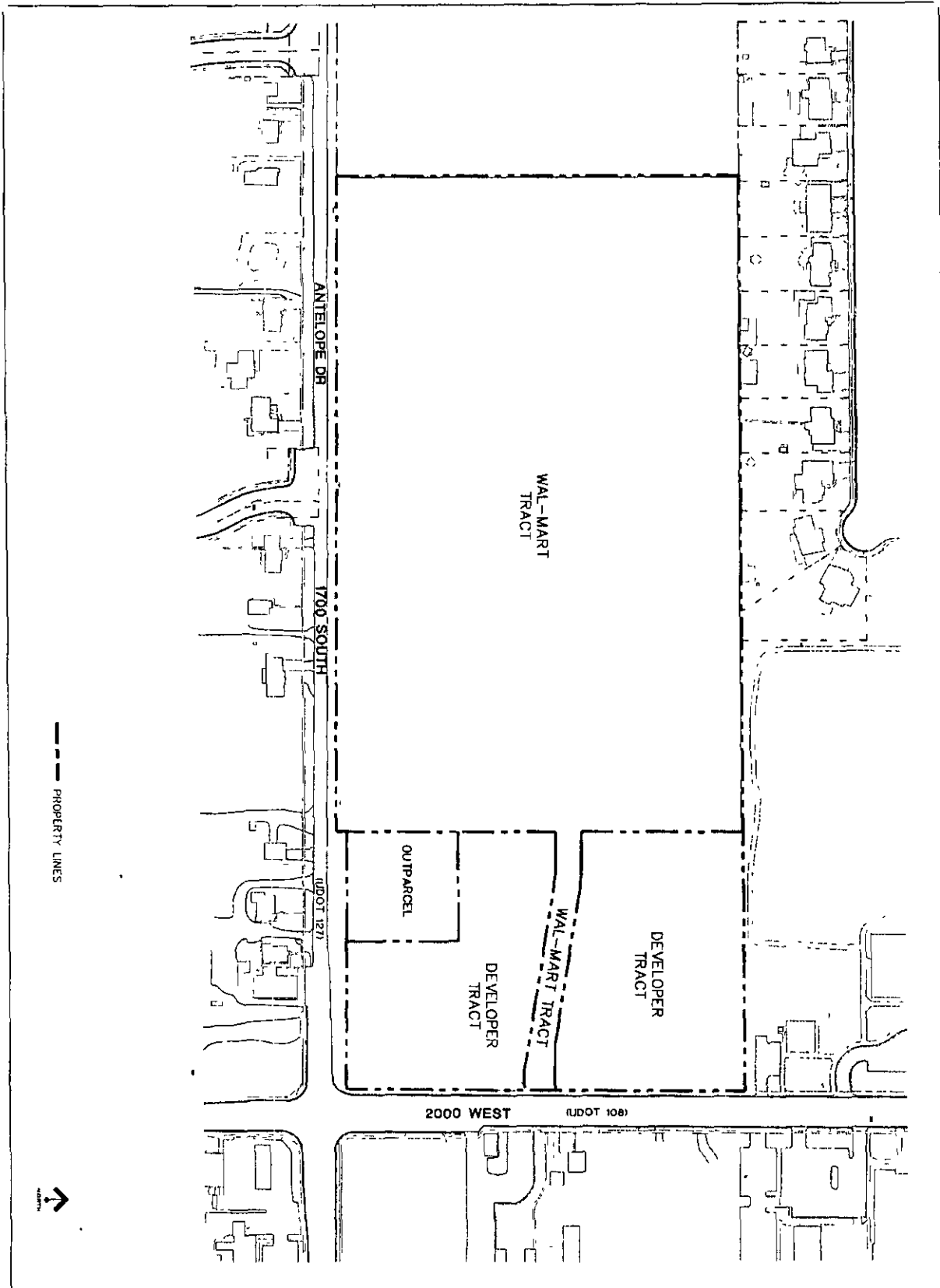
State of _____

County of _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2005, by Robert S. Talbott, the President of Holrob Investments, LLC, a Tennessee limited liability company, on behalf of the company.

(Seal and Expiration Date)

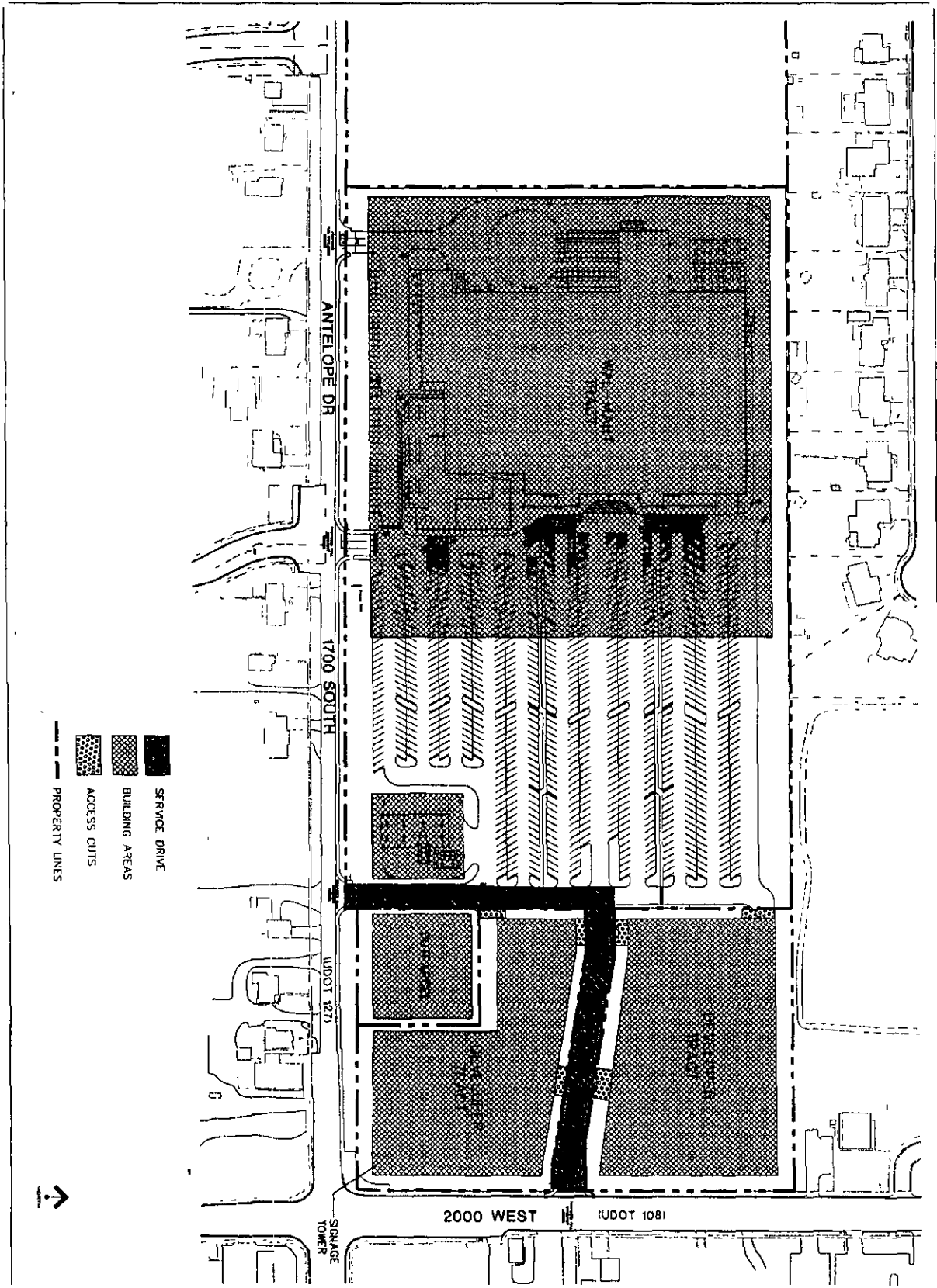
Notary Public



— RECORDER'S MEMO —
 LEGIBILITY OF TYPING OR PRINTING
 UNSATISFACTORY IN THE DOCUMENT
 WHEN RECEIVED

EX 11 PREPARED AND SUBMITTED BY: [Blank] CHECKED BY: [Blank]	DATE OF ISSUE: [Blank]	PRELIMINARY SITE PLAN BYRACUSE TOWN CENTER 1700 SOUTH & 2000 WEST BYRACUSE, UTAH	
	EXHIBIT A 1 TO ECR		

—RECORDER'S MEMO—
LEGIBILITY OF TYPING OR PRINTING
UNSATISFACTORY IN THE DOCUMENT
WHEN RECEIVED



- SERVICE DRIVE
- BUILDING AREAS
- ACCESS CUTS
- PROPERTY LINES

<p>DATE: 11/11/08</p> <p>BY: [Signature]</p> <p>PROJECT: SYRACUSE TOWN CENTER</p> <p>OWNER: [Name]</p> <p>DESIGNER: [Name]</p>	<p>PRELIMINARY SITE PLAN</p> <p>SYRACUSE TOWN CENTER</p> <p>1700 SOUTH & 2000 WEST</p> <p>SYRACUSE UTAH</p>	
	<p>EXHIBIT A 2 TO ECR</p>	

EXHIBIT B

(Wal-Mart Tract legal description)

WAL-MART TRACT DESCRIBED AS

ALL LOTS 1, 2 & 6 OF THE SYRACUSE WAL-MART SUBDIVISION, AS SHOWN ON A PLAT RECORDED IN BOOK 18, PAGE 606 OF OFFICIAL DAVIS COUNTY RECORDS.

CONTAINS 21.20 ACRES, MORE OR LESS.

**-RECORDER'S MEMO-
LEGIBILITY OF TYPING OR PRINTING
UNSATISFACTORY IN THE DOCUMENT
WHEN RECEIVED**

PROJ # 04.0153
DATE 07/19/05
REV # -
ASI # -
R DATE -

SYRACUSE WAL-MART
WAL-MART TRACTS
EXHIBIT "B"
2000 WEST 1700 SOUTH
SYRACUSE, UTAH

CLC ASSOCIATES
350 SOUTH 400 EAST
SUITE 204
SALT LAKE CITY
UTAH 84111
P 801 363 8605
F 801 363 8604
CLCASSOC.COM
ARCHITECTURE
ENGINEERING PLANNING
LANDSCAPE ARCHITECTURE
LAND SURVEYING



LEGAL DESCRIPTION

EXHIBIT C

(Developer Tract and Outparcel legal description)

DEVELOPER TRACT DESCRIBED AS

ALL LOTS 4 & 5 OF THE SYRACUSE WAL-MART SUBDIVISION, AS SHOWN ON A PLAT RECORDED IN BOOK 12, PAGE 606 OF OFFICIAL DAVIS COUNTY RECORDS.

CONTAINS 6.53 ACRES, MORE OR LESS.

OUTPARCEL DESCRIBED AS

ALL LOT 3 OF THE SYRACUSE WAL-MART SUBDIVISION, AS SHOWN ON A PLAT RECORDED IN BOOK 12, PAGE 606 OF OFFICIAL DAVIS COUNTY RECORDS.

CONTAINS 0.95 ACRES, MORE OR LESS.

-RECORDER'S MEMO-
LEGIBILITY OF TYPING OR PRINTING
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PROJ # 04 0153
DATE 07/19/05
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AS: # -
R DATE -

SYRACUSE WAL-MART
HOLROB TRACTS
EXHIBIT "C"
2000 WEST 1700 SOUTH
BYRACUSE, UTAH

CLC ASSOCIATES
350 SOUTH 400 EAST
SUITE 304
SALT LAKE CITY
UTAH 84111
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F 801 363 5604
DLOASSOC.COM
ARCHITECTURE
ENGINEERING PLANNING
LANDSCAPE ARCHITECTURE
LAND SURVEYING



LEGAL DESCRIPTION